Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
Rome: Typis Polyglottis Vaticanis, Vol. 7 (1872–1873)

Note on this translation. This English text was produced by a machine-assisted translation pipeline from an OCR transcription of the source Latin edition. The draft translation was made by a specialised translation model, assisted by a dedicated ecclesiastical-Latin knowledge base which supplied Douay–Rheims wording for Scripture quotations and verified place-names and terminology. It is an unofficial reading aid and has *not* undergone formal scholarly revision; occasional errors will remain, particularly in the dense citation apparatus. Marginal references of the form [*Latin ed. p. N*] indicate the corresponding page of the source edition, for alignment with the original scans. Blank leaves and unreadable pages have been omitted.

[*Latin ed. p. 1*]

A COMPENDIUM, CONVENIENTLY ARRANGED AND ILLUSTRATED, PREPARED WITH DILIGENCE AND CARE BY VICTOR PIAZZI, DOCTOR OF BOTH LAWS, CONTAINING: Acts juridical and those emanating immediately from the Supreme Roman Pontiff with greater solemnity; acts, meanwhile, which can be made public by law, whether they be Decrees, or Instructions, or Responses, or other similar matters; especially, expositions and resolutions of cases from the Sacred Congregations, by various Cardinals, contributing to the accurate understanding and observance of ecclesiastical law, carefully compiled in a compendium; and finally, other juridical matters, by which those things which may present difficulty in the aforementioned acts are suitably illustrated, or which further contribute to the knowledge of existing law: for the benefit of those who diligently strive to understand the laws of the Church and in the governance of the Christian flock, or in the diligent cultivation of the Lord's vineyard. Volume VII. YEAR 1892-93. ROME. FROM THE VATICAN POLYGLOT PRINTING PRESS. 1915. Reprinted with the permission of the Libreria Editrice Vaticana. JOHNSON REPRINT CORPORATION, 111 Fifth Avenue, New York, N. Y. 10003. JOHNSON REPRINT COMPANY LTD., Berkeley Square House, London, W. 1.

[*Latin ed. p. 5*]

FROM THE VATICAN: Letter of the Most Holy Father to His Eminence, Cardinal James Antonelli, entrusted with the management of external affairs of the Pontifical jurisdiction, dated the 17th of June, 1872, concerning the attempted suppression of Religious Orders in Rome by the usurping Piedmontese Government. DOCUMENT. "Compelled in these present, most grievous circumstances to witness daily the painful spectacle of new and violent attacks against the Church, we feel today in a particular way the need to take up the pen to make known to you, Most Eminent Cardinal, the profound bitterness that we felt upon recently learning of the declaration made by the President of the Ministers of this usurping Government, regarding his firm intention to present as soon as possible to the Chambers a law for the suppression of the Religious Orders in this Our city, the seat of the Vicar of Jesus Christ and metropolis of the..."

In these most sorrowful times, compelled to witness daily the bitter spectacle of new and rabid attempts against the Church, we experience in a particular way the necessity of taking up the pen, so that we may make known to you, Beloved Son, the profound bitterness that we have felt, when we recently received the announcement made by the President of the Ministers of this usurping Government, concerning his certain intention to propose as soon as possible to the popular assembly a law for abolishing the Religious Orders in this Our City, the Seat of the Vicar of Jesus Christ and

Translated by churchlatin.ai, a product of Boyne Archives

metropolis of the...

[*Latin ed. p. 6*]

6. Letter to the Catholic World. This declaration, which increasingly reveals the true aim to which the stripping away of the temporal power from the Apostolic See is directed, is a new outrage inflicted, not only upon Us, but upon the entire Catholic world. For who can deny that suppressing the religious orders in Rome, or even arbitrarily limiting their existence, does not merely attack the freedom and independence of the Roman Pontiff, but also deprives Him of one of the most powerful and effective means for the governance of the universal Church? Everyone knows that, just as Rome is the center of Christianity, so the religious houses, which have existed there for centuries, are, so to speak, the center of all the respective orders and congregations scattered throughout the Catholic world. They are, in effect, like seminaries erected by the tireless care of the Roman Pontiffs, endowed by the generosity of pious benefactors, both foreign and domestic, and regulated by the supreme pontifical authority, from which they draw life, discipline, and guidance.

[*Latin ed. p. 7*]

Letter of the Holy Father, 7th point. These Houses were instituted and destined to provide workers and missionaries for all parts of the universe. Without resorting to history, to point out the advantages brought to the Christian republic and to humanity itself by these followers of the evangelical counsels, it suffices to survey with the eyes the various regions of Europe, and the most remote and inhospitable shores of Asia, Africa, America, and Oceania, where even today these zealous ministers of God, with exemplary self-denial, dedicate their strength, their health, and even their very lives for the benefit and salvation of the peoples. "Indeed, if the Religious Orders were suppressed in Rome, or even their existence were limited in any way, it will no longer be possible for the world to experience, as it does today, the benefits of these pious and charitable institutions. For it is in Rome that the principal novitiates are located, which are intended to train new heralds of the faith; and it is here that religious men of every nation come, to temper their spirit and to fulfill the missions entrusted to them."

[*Latin ed. p. 8*]

8. The letters of the Holy Fathers serve to temper their spirit and to give an account of their missions; here, under the protection of the Apostolic See, the affairs of all the houses, even those abroad, are conducted; here, with the participation of religious from different nations, the superiors general, the dignitaries of the Orders, and the heads of all the provinces are elected. How, therefore, can one hope that, with these great centers destroyed, and in the conditions in which they currently find themselves, and without this supreme guidance, the vivifying and beneficial work of

Translated by churchlatin.ai, a product of Boyne Archives

these evangelical workers will produce the same results as today? By no means: to abolish the religious houses in Rome is nothing other than to cause the communities scattered throughout the world to perish; just as to deprive them of their possessions here is entirely the same as stripping the entire Order of its legitimate property. Therefore, the abolition of the religious Orders in Rome is not only a manifest injustice towards men who have deservedly earned the esteem of society, but also a true violation of that law by which all the nations of the Catholic world are bound together.

[*Latin ed. p. 9*]

"Furthermore, out of a sense of duty and gratitude, it must be affirmed that the suppression of religious houses in Rome would, at the same time, cause no small detriment to this Apostolic See; for the most distinguished among those individuals dedicate themselves, as most useful collaborators in the sacred ministry, to the service of the various ecclesiastical Congregations, now providing information on the various missions entrusted to their care; now diligently engaged in studies to refute errors; now prudently offering their wise opinions on various matters concerning the discipline of individual churches throughout the Catholic world. Therefore, My Most Reverend Son, the true purpose intended by the usurping government in the aforementioned law for the suppression of religious orders in Rome is clearly manifest. Indeed, this is nothing other than the continuation of that nefarious and subversive scheme, which, since the day of the violent occupation of Rome, has been hypocritically carried out, not only to the detriment of Our temporal authority, but especially to the detriment of Our supreme apostolate, for whose benefit We strive."

[*Latin ed. p. 10*]

10. By this letter, We, with the authority of Our Holy Fatherhood, but especially by reason of Our supreme Apostolate, announce that, for Our advantage, it was proclaimed with mockery that We were to be deprived of the patrimony of the Church: a patrimony bestowed upon the Roman Pontiffs by the wondrous decree of Divine Providence, and possessed by them for more than eleven centuries with the most sacred and most legitimate titles, for the benefit of the entire Christian family. "And who could today entertain any illusion concerning the nature of this scheme, which aims to undermine Our authority as supreme Head of the Church, to diminish its dignity, to hinder the exercise of Our august ministry, and finally to disrupt the age-old order of this Apostolic See? You, Most Eminent Cardinal, are witness every day to the usurpations that are being committed, now under one pretext, now under another, to the detriment of religion, morality, and justice; usurpations which all tend towards the execution of that destructive plan. For what else does the gradual withdrawal from Our authority amount to, which was formerly proclaimed to Our detriment:

Translated by churchlatin.ai, a product of Boyne Archives

the patrimony, I say, which was entrusted to the Roman Pontiffs by the wondrous counsel of Divine Providence, and which has been possessed by them for more than eleven centuries with most sacred and legitimate titles, for the benefit of the entire Catholic family? But who could today make any illusion about the nature of this scheme, which aims to destroy Our authority as supreme Head of the Church, to diminish its dignity, to hinder the exercise of Our august ministry, and finally to disrupt the age-old order of this Apostolic See? You, Our Beloved Son, You yourself are witness every day to the usurpations that are being committed, now under one guise, now under another, to the detriment of religion, good morals, and equity: usurpations which all tend towards the execution of that fatal design. To what else does this gradual withdrawal from Our authority amount?"

[*Latin ed. p. 11*]

To what does all concern for institutions of charity and beneficence, for schools for young people and for public lyceums, which have always been the most cherished and pressing concern of Our Predecessor Popes, amount? To what, if not this, does that ill-omened law tend, which, by forcing young men dedicated to God into military service, cuts off, like an inexorable scythe, the most promising hopes of the Church, and deprives the sanctuary and the cloister of an excellent company of new and industrious ministers? To what, if not this, does that unrestrained freedom of teaching, which allows the impudent dissemination of errors of every kind, whether through the press or through public and scandalous preaching, so boldly maintained by men who have abandoned their religion and rebel against the authority of the Church, tend? To what does that laxity in morals, that insolent license in public spectacles, those constant insults to the Sacred Images and to the ministers of the Lord, those frequent profanations of religious worship, those abominable mockeries of everything that is most sacred and inviolable, that systematic oppression of every honest person devoted to the Church and the Pope, amount?

[*Latin ed. p. 12*]

12 To the Most Holy Father Elias, Most Reverend Cardinal, know that Our heart is torn by the daily sight of all these misfortunes afflicting the Church. Rendered powerless to offer even the slightest remedy, We can only weep over the evils of Our flock; yet, We do not fail to raise Our voice publicly to lament and protest against the outrages suffered by the Church, and to make manifest to the world the miserable condition to which We are reduced by the wickedness of the times. "Indeed, We could have, to some extent, spared Ourselves the sacrifice of daily drinking so bitter a chalice and of personally witnessing so desolate a spectacle, by seeking refuge in a foreign land. But, if reasons of the highest religious importance advised Us, in the present state of affairs, not to abandon, for the time being, this

Translated by churchlatin.ai, a product of Boyne Archives

city so dear to Us, the Seat of the Roman Pontificate; this was certainly not without a singular decree of Divine Providence, so that the world might, with its own eyes, behold the oppression of any and every person devoted to the good of the Church and the Holy See." Beloved Son, how greatly Our heart is lacerated when We daily behold so many calamities afflicting the Church. Rendered powerless to offer even the smallest remedy for these evils, We can only follow Our flock with tears; yet, We do not fail to raise Our voice publicly, so that We may lament and protest against the violence which the Church suffers, and so that We may make manifest to the world the miserable condition to which We have been reduced by the wickedness of the times. Indeed, We could have, to some extent, avoided this torment, this daily drinking of so bitter a chalice, and this personally witnessing of so lamentable a spectacle, by seeking refuge in some foreign region. But, if reasons of the greatest importance for the sake of religion advised Us, in the present condition of affairs, not to abandon this city so dear to Us, the Seat of the Roman Pontificate; this was certainly not without a special decree of Divine Providence, so that the world itself might behold.

[*Latin ed. p. 13*]

Letter 13 concerning the fate reserved for the Church and the Roman Pontiff, when the freedom and independence of his supreme apostolate are compromised by a change in a state providentially ordained by God. "And indeed, after this new order of things, how can the Pope be called free and independent? It is not enough that he may, for the moment, be materially free in person; he must be, and must appear to all, free and independent in the exercise of his supreme authority. Now, the Pope is not, nor will ever be, free and independent, as long as his supreme power is subjected to the tyranny and whim of an opposing authority; as long as his exalted ministry is subjected to the influence and domination of political passions; as long as his laws and decrees are not exempt from the suspicion of partiality or offense to the respective nations. In this new condition of things brought about for the Papacy after the usurpation, there is no way to avoid conflict between the two powers: reconciliation and..."

[*Latin ed. p. 14*]

14. The letter of the Holy Father is a patrimony of the Church; the conflict between the two powers is inevitable: agreement and harmony cannot depend on the will of men. Since the relationships between the two powers are based on an absurd system, the effects can only be those naturally derived from opposing elements, which must necessarily keep them in continuous and painful conflict. "Indeed, history itself is full of conflicts between the two authorities and examples of unrest in the Christian family whenever the Roman Pontiffs were, even for a moment, subjected to the authority of a foreign power. The reason for this is quite clear. Since the

Translated by churchlatin.ai, a product of Boyne Archives

world is divided into a considerable number of states, some independent of others, some strong and powerful, others small and weak, peace and tranquility in the consciences of the faithful could not exist otherwise than through their security and conviction of the supreme impartiality of the common Father of the faithful and the independence of his actions. Now, how could concord depend on the will of men? The relationships between the two powers, established on an absurd system, cannot produce effects other than those that naturally flow from opposing elements, and these elements must necessarily foster continuous and bitter contention between them. Moreover, history abounds with conflicts between the two authorities and examples of disturbances in the Christian family, whenever the Roman Pontiffs have been subjected, even for a moment, to the authority of a foreign power. The reason for this is clearly evident. Since the world is divided into a large number of states, some entirely independent of others, some very powerful, and others small and weak, peace and tranquility in the consciences of the faithful could not take root otherwise than through their firm knowledge and certainty that the common Father of the faithful is entirely free from any partiality, and that his actions are subject to the will of no one. Indeed, how..."

[*Latin ed. p. 15*]

Today, this is the case: if the actions of the Roman Pontiff are constantly exposed to the agitation of parties, to the arbitrary will of rulers, and to the danger of having his rest, and the very tranquility of his advisors and ministers, disturbed at every turn? "Also, the freedom of the sacred Congregations, to whom it belongs to resolve questions and to respond to all the consultations of the Catholic world, is of too great importance to the security of the Church and to the legitimate and pressing needs of all Christian nations. Indeed, it is necessary that no one on earth should ever suspect the freedom and independence of the decisions and decrees issued by the common Father of the faithful. It is necessary that no one should be disturbed by the fear of external pressures in pontifical resolutions. It is necessary that the Pope, the Congregations, and even the Conclave, not only be free in fact, but that this freedom also appear evident and manifest, and that in this regard, neither doubt nor suspicion should arise. Now, the religious freedom of Catholics could not be obtained, since the actions of the Roman Pontiff are perpetually subject to the agitation of factions, the arbitrary will of rulers, and the danger of having his rest, and the very tranquility of his advisors and ministers, disturbed at every turn."

[*Latin ed. p. 16*]

16. The Holy Father's letter, having as an unchangeable condition the freedom of the Pope, it follows that if the Pope, the supreme judge and the living organ of the faith and law of the Catholics, is not free, they will

Translated by churchlatin.ai, a product of Boyne Archives

never be able to be assured of the freedom and independence of his actions. From this arise the doubts and anxieties of the faithful; from this arise the religious disturbances of the states; from this arise those Catholic demonstrations, a symbol of the inner unrest of the spirit, which have grown more and more since the violent stripping of the last remnants of the papal domains, and which will have no end until the Head of Catholicism returns to the possession of his full and real independence. "Given this, it is not easy to persuade oneself as to how it can still seriously be spoken of a reconciliation between the Papacy and the usurping government. And what reconciliation, indeed, could take place in the present condition of things? It is not a question of a simple matter arising, either in the political or in the religious order, which admits of suitable terms for a proper settlement. Rather, it is a question of the condition of the Roman Pontiff by

[*Latin ed. p. 17*]

Letter No. 17. This concerns a situation violently imposed upon the Roman Pontiff, which almost entirely destroys that freedom and independence which is indispensable for the governance of the Church. Therefore, to agree to a reconciliation of this kind would, on the part of the Roman Pontiff, amount not only to renouncing all the rights of the Holy See transmitted to him by his august predecessors, but also to resigning, by an act of his own will, to frequently encountering obstacles in the exercise of his supreme ministry; to leaving the consciences of the faithful disturbed and agitated; to closing the way to the free manifestation of the truth; in a word, to voluntarily surrendering that sublime mission which the Roman Pontificate received directly from God, with a strict duty to safeguard its independence from every human power. "No: We cannot yield to attacks against the Church, to the usurpation of its most sacred rights, to the undue force..."

[*Latin ed. p. 18*]

18. Letter concerning the intrusion of civil power into religious affairs. Firm and unwavering in defending, with honor and with all the means still at our disposal, the interests of the flock entrusted to our care, We are ready to endure greater sacrifices, and even, if necessary, to shed our own blood, rather than failing in any of the duties imposed upon us by our supreme apostolate. What more can we say? With the help of the Lord, We shall never fail to give an example of strength and courage to the pastors of the Church and to other sacred ministers, who, in these most difficult times, wage so many battles for the cause of God, for the good of souls, for the defense of the sacred deposit of the faith, for the safety of the eternal principles of morality and justice. "What, then, shall we say, Most Reverend Cardinal, about those pretended guarantees that the usurping government seemed to wish to grant to the Head of the Church, with the intention of

Translated by churchlatin.ai, a product of Boyne Archives

deceiving the simplicity of the unwary, and of providing support to those political factions to whom the freedom of the Roman Pontiff is certainly of no concern, in *Albert*?

[*Latin ed. p. 19*]

The letter of the Holy Father [19] reveals the naiveté of the unwary and offers a weapon to those political factions to whom the freedom and independence of the Roman Pontiff are of little concern. Setting aside any other reasoning, what is happening today in Rome, at a time when there is every interest in convincing Europe of the strength and effectiveness of the so-called law, is the most eloquent argument to demonstrate its futility and impotence. Indeed, what benefit is there in proclaiming the immunity of the person and residence of the Roman Pontiff, when the Government lacks the power to protect Us from the daily insults to which Our authority is subjected, and from the offenses repeated in countless ways against Our very person; and when, along with every honest man, We must be sorrowful witnesses to the manner in which, in some cases, even very recent ones, penal justice is administered? What benefit is there in not keeping the door of Our dwelling closed, if it is not possible for Us to leave without witnessing impious and odious spectacles; without being exposed to outrages by those who have gathered here to foment immorality and disorder; without running the risk of unintentionally causing some conflict.

[*Latin ed. p. 20*]

20. Letter to Holy Father, concerning citizens? What does it matter to promise personal guarantees to the high dignitaries of the Church, when they are even obliged to conceal, through various means, the insignia of their dignity, lest they be exposed to every kind of ill-treatment? When the ministers of God and the most sacred things are the object of mockery and derision, so that sometimes it is not even fitting to perform publicly the most august ceremonies of our holy Religion? When, finally, the sacred pastors of the Catholic world, who are obliged from time to time to come to Rome to give an account of the affairs of their Churches, may themselves be exposed, without any real guarantee, to the same insults and perhaps even to the same dangers? "It avails nothing to proclaim the freedom of our pastoral ministry, when all the legislation, even in matters of the greatest importance, such as the Sacraments, is openly in opposition to the fundamental principles and universal laws of the Church. It avails nothing to recognize by law the authority of those to whom we are subjected, when we are subjected to reproaches; why should we risk conflict, even if unwillingly? What good are personal guarantees promised to the highest officials of the Church, if they are also forced to conceal the insignia of their own dignity, lest they be subjected to every kind of bad treatment? If the ministers of God and the most sacred things are met with mockery

Translated by churchlatin.ai, a product of Boyne Archives

and derision, so that sometimes it is not even fitting to perform publicly the most august ceremonies of our holy Religion? If, finally, the sacred pastors of the Catholic world, who are obliged from time to time to come to Rome, to give an account of the affairs of their Churches, may themselves be exposed, without any real guarantee, to the same insults and perhaps even to the same dangers? It avails nothing to proclaim the freedom of our pastoral ministry, when the entire legislation, even in matters of the greatest importance, such as the Sacraments, is openly in opposition to the fundamental principles and universal laws of the Church. It avails nothing to..."

[*Latin ed. p. 21*]

To the Most Holy Father, the Supreme Head, when the effects of the acts issued by him are not recognized; when the very Bishops appointed by him are not legally recognized, and they are unjustly prevented from enjoying the legitimate patrimony of their Churches, and even from entering their episcopal residences; so that they would be reduced to a state of complete abandonment, if it were not for the charity of the faithful which sustains Us, providing Us, at least for the present, a means of sharing with them the alms of the poor. In a word: what guarantee could a Government offer for the observance of its promises, when the very fundamental laws of the State are not only trampled upon with impunity by any citizen, but are rendered null and void by the Government itself, which, at every step, evades their respect and observance, now with laws, now with decrees, as it pleases?

"All these things, Most Reverend Cardinal, we have laid before you, for the very purpose that you may make known to the representatives of the Governments before this Holy See the lamentable state to which..."

[*Latin ed. p. 22*]

22 To the Most Reverend Fathers, accredited representatives of the Governments before this Holy See, We communicate the lamentable state in which We find ourselves, due to the new order of things, to the great detriment of the Catholic cause; We charge them to demand and protest, in Our Pontifical Name, against the outrages that have been committed and those that are threatened, not only to Our detriment, but also to that of the entire Catholic Church. Interested, as We are, in the peace and tranquility of consciences, We trust that they will consider this lack of freedom and independence in the exercise of Our Apostolic ministry. For if every faithful person has the right to demand from their Government the guarantee of their personal freedom in matters of religion, no less do they have the right to demand the guarantee of the freedom of Him who is, for them, the guide, the interpreter of their faith and their religion. Moreover, it is a true interest of all Governments, whether they profess the Catholic religion or not, to restore peace and tranquility to the great Catholic family, and

Translated by churchlatin.ai, a product of Boyne Archives

to uphold Our true independence. And indeed, we have been brought to detriment of the Catholic cause by the new order of things; We command you, that in Our Pontifical Name you may contend and protest against those who have perpetrated, and those who threaten, acts that are detrimental not only to Us, but also to the entire Catholic republic. Since these, as well as We, are concerned with the peace and tranquility of consciences, We trust that they will highly value this lack of freedom and independence in the exercise of Our Apostolic ministry. For if it is the right of every faithful person to demand from their own Government the protection of their personal freedom in religious matters, it is certainly no less their right to demand a guarantee for the freedom of Him who serves as their guide and interpreter of their faith and religion. Indeed, it is of the greatest interest to all Governments, whether they profess the Catholic religion or not, to restore peace and tranquility to the great Catholic family, and to uphold Our true independence.

[*Latin ed. p. 23*]

From the letter of the Holy Father: "Indeed, they ought to recognize that, having been called by God to defend and uphold the principles of eternal justice, they have the duty to defend and protect a cause that is the most legitimate of all those known on earth, confident, as they ought to be, that by upholding the sacred rights of the Roman Pontificate, they defend and uphold their own. Nor can they fail to remember that the Roman Pontificate and the papal throne, far from being an obstacle to the peace and prosperity of Europe, or to the greatness and independence of Italy, have always been the bond of union between peoples and princes, the common center of concord and peace; and for Italy, moreover (it must be said), it has been the true source of its greatness, the safeguard of its independence, the constant defense, and the bulwark of its liberty. Finally, since there can be no better guarantee for the Church and for its Head than prayer offered up to Him in whose hands are the destinies of kingdoms, and who with a single gesture can calm the waves and quell the storm, therefore, We never cease to..."

[*Latin ed. p. 24*]

24. The Holy Father does not cease to offer continuous and fervent prayers to the Most High for the cessation of so many evils, for the conversion of sinners, and for the triumph of our Mother the Church. Joining these Our prayers with those of all Our most beloved sons scattered throughout the Catholic world, We cannot refrain from invoking a special blessing upon all, also out of gratitude, which may preserve them from new and more terrible chastisements; to keep them steadfast and firm in the principles of honor and in the path of virtue; and finally, through the intercession of the Most Holy Immaculate Virgin, Her Spouse St. Joseph, and the Holy Apostles Peter and Paul, to restore them to their former

Translated by churchlatin.ai, a product of Boyne Archives

peace and prosperity. "Receive, therefore, in this meeting, My dear Son, the Apostolic Blessing, which We impart to you with all Our heart. " Given at Rome, from the Vatican, on the 16th day of June, in the year 1872. PIUS IX.

[*Latin ed. p. 25*]

FROM THE SECRETARY'S OFFICE: APOSTOLIC LETTER Concerning the Apostolic Vicariate for the Sacred Missions of Central Africa. POPE PIUS IX, FOR THE SAKE OF FUTURE REMEMBRANCE. "To promote the Catholic Faith among the peoples of the interior of Africa and to spread its blessed influence, Our Predecessor, Pope Gregory XVI, by His Apostolic Letters dated April 3, 1846, established the Apostolic Vicariate of Central Africa, and defined its boundaries in those same Letters. Now, however, in order that we may consider this Vicariate with greater firmness, and better provide for the eternal salvation of those peoples, We have come to the decision to entrust the same Vicariate, until now under the precarious care of the Venerable Brother Aloysius Ciurcia, Archbishop of Irenopolitanus, and Apostolic Vicar of Egypt, and entrusted to the administration of the Brothers of the Order of Saint Francis, to chosen sons, priests of the Veronese Institute for Missions to the Negroes, for its governance and administration. Wherefore, We desire to show special favor to all and each of those to whom these Our Letters are addressed, and We declare that they shall be absolved, for this sole purpose, from any and all excommunications, interdicts, and other ecclesiastical censures, sentences, and penalties, of whatever kind or for whatever reason, if they should have incurred them, and that they shall be considered absolved. We entrust the Venerable Brother Archbishop of Irenopolitanus and Apostolic Vicar of Egypt with the care of the Apostolic Vicariate of Central Africa, and We release the chosen sons, the Brothers of the Order of Saint Francis, from the administration of the same Vicariate, to the honor of both."

[*Latin ed. p. 26*]

Letters 26, having been prepared with care, are hereby released; and the Vicariate of Central Africa, with the Prefecture of Sahara removed therefrom, is entrusted, with the consent of the Most Reverend Fathers, Cardinals of the Holy Roman Church, appointed to promote the Christian Name, to the beloved sons, Priests of the Venerable Institute of Missions for Negroes, for their governance and administration; and to these same priests, we grant and concede all and singular suitable faculties for this purpose. We decree that these Our Letters shall always exist and be valid and efficacious, and shall have their full and complete effect, and shall prevail in all things and through all things; and thus, in the premises, they shall be upheld by any and all ordinary judges, and delegates, even auditors of the Apostolic Palace, Nuncios of the Apostolic See, and Cardinals

Translated by churchlatin.ai, a product of Boyne Archives

of the Holy Roman Church, even as Legates, without any possibility of them judging or interpreting otherwise, and shall be considered valid and effective, and if otherwise, anything should happen to be attempted by anyone with authority, knowingly or unknowingly, it shall be declared invalid and void. Notwithstanding Our regulations and those of the Apostolic Chancery concerning matters of law, and to the extent that the blessed record of Pope Benedict XIV, Our Predecessor, concerning the division of matters, and other Apostolic Constitutions and Ordinances, and all other things to the contrary, are not to be disregarded.

"Given at Rome, at Saint Peter's, under the Fisherman's Ring, on the eleventh day of June, in the year 1872, in the twenty-sixth year of Our Pontificate."

N. L.

CARD. PARACCIANI CLARELLI.

We shall refer to the faculties granted to the Apostolic Vicar in another section; for the knowledge of these extraordinary faculties also sheds light on canonical jurisprudence.

[*Latin ed. p. 27*]

FROM THE HOLY CONGREGATION FOR THE PROPAGATION OF THE FAITH. Concerning the newly established Apostolic Pro-Vicar for the sacred missions of Central Africa. DECREE: "Since the Holy Congregation, having held its general assemblies on May 21, 1872, had decreed that the Vicariate of Central Africa should be entrusted to the administration of the Institute of Priests of the Sacred Heart of Jesus, known as the Verona Missionaries for the Negroes; the Most Reverend Fathers of the same Holy Congregation deemed it fitting to petition His Holiness, our Most Holy Father Pius Divine Providence, Pope IX, that he might deign to appoint the Reverend Daniel Comboni, devoted to that same Institute, a priest proven by undoubted testimonies of learning, piety, and experience, to preside over that mission with the office and faculties of Apostolic Pro-Vicar. "When the opinion of the Holy Congregation, as is written below, was presented to His Holiness by the undersigned Secretary of the same Holy Congregation, in an audience held on the 26th of the same month, the Supreme Pontiff approved it in all respects and ordered that this Decree be issued accordingly. "Given at Rome, from the offices of the Holy Congregation for the Propagation of the Faith, on May 26, 1872." A. Cardinal BARNABÒ, Prefect. L. [Signature] S. Ioannes Simeoni, Secretary.

[*Latin ed. p. 28*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT, CONCERNING FUNERAL RITES, dated September 16, 1871. Summary of

Translated by churchlatin.ai, a product of Boyne Archives

the case. In the city of Italy, there exists a Carmelite church within the "limits of the parish of T." Due to the unjust suppression of religious orders in Italy, as is customary, one Carmelite remained in that church as custodian or rector, appointed both by the Superior of the Carmelite Order and by the local Ordinary. Furthermore, since that church possessed the right of burial, and certain families had family tombs within it, in the year 1869, certain controversies arose concerning funerals between the Carmelite rector and the parish priest or administrator of the parish, on the occasion of the death of a certain Anne, who, although from a different parish, R, nevertheless possessed a family tomb in that aforementioned religious church. Therefore, after Anne's death, the Carmelite rector prepared the body for burial, intending to erect a cross and carry the body in a pall, as was perhaps the custom in that city before the suppression. When the administrator of the parish of T learned of this, believing that this action would harm the rights of the parish, which he considered to have devolved to the parish itself after the suppression of the church, he appealed to the ecclesiastical court, which granted the presumed rights of the administrator. Therefore, the same administrator sent chaplains, who, together with chaplains from another parish, R, carried the body to the religious church; and since no one was present to receive the body, the religious funeral rites were performed by those same individuals.

[*Latin ed. p. 29*]

Concerning the laws of burial, 29. The administrator, lest he appear to be motivated by profit, testified that, after deducting all expenses, he had only received one hundred and fifty livres, and that he was prepared to give this sum to anyone as the question at hand was resolved. After the question of to whom the right of burial belonged was omitted, the Superior of the Carmelite Order examined the matter with these questions: "1. Does the Carmelite church still 'enjoy' the laws of burial as before? And, assuming an affirmative answer: "2. Are the benefits derived by the administrator concerning the matter to be restored?" Having submitted such a written statement to the Ordinary so that he might express his opinion, and after hearing the testimony in writing of the parish administrator T, the following was written by the Curia, among other things, for the purpose of providing a resolution that would serve for future events: "The Carmelite church is no longer to be considered and treated as a church of Regular canons, and therefore the privileges of exemption, by which it previously enjoyed benefits in view of the religious community, are suspended. It remains therefore under the immediate jurisdiction of the Ordinary, who can perform a sacramental visitation there, transfer parochial functions if necessary, etc. In short, it is to be treated as any other church, neither parochial nor of Regular canons. Its rector depends only on the Ordinary, and the parish priest T, within whose parish the aforementioned church is

Translated by churchlatin.ai, a product of Boyne Archives

located, can claim no right over it. Therefore, if the case arises in which a deceased person, having a right to burial in that church, must be brought there and receive the customary rites, if the deceased is subject to the parish priest T, it is his duty to perform the funeral rites over the body, as is stated in the Decree of the City and the World of January 12, 1704, reported by Benedict XIV in Note 105. If, however, the deceased is not subject to the parish priest T, then the parish priest brings the body to the aforementioned church, and after singing the antiphon *Subvenite*, etc., he departs, and the rest is carried out by the rector of the church, as our Synod has decreed.

[*Latin ed. p. 30*]

30 Concerning the Laws of Burial: "Now, since burial within churches is prohibited by civil law, and therefore, after the funeral, the bodies are taken to a public cemetery, the question arises as to whom the right of association with the deceased belongs. To this, the Episcopal Curia responded that the right of association pertains to the Parish Priest within whose parish the Carmelite church is located; indeed, this church cannot raise a cross, and therefore, cannot, for that reason, associate the deceased. However, the Parish Priest has fulfilled his office concerning the deceased; therefore, the right of association with the cemetery belongs to Parish Priest T, that is, to the Parish Priest within whose parish the Carmelite church is situated."

A Synopsis of the Arguments: THE RIGHTS WHICH BELONGED TO PARISH PRIEST T. In order to confirm what the Episcopal Curia has stated concerning Parish Priest T, it was noted that, by virtue of office, the privilege of burying and performing funeral rites may pertain to the church, not purely and simply, but by reason of the religious family; and therefore, although unjustly suppressed, this privilege would be lacking according to what is stated in the decision of the Rota before Emerix, decision 102c, n. 16; and before Ratto, decision 105, n. 3. The same had been decided in a similar case by the Holy Congregation for Reform on December 16, 1816. Since the convent of the Minor Conventuals, located in Pergola, had not been restored to its former state, nor was it likely to be restored in the future, the following was asked: "I. Whether the church attached to the convent should be considered, for the purpose of privileges, ecclesiastical offices, burial, etc., as a regular church; and, if so, negatively: "II. Whether it should be considered as a filial church to the parish, so that the parish priest therein exercises all rights." To this, the same Holy Congregation responded: to I, negatively; to II, affirmatively. These resolutions were confirmed by Pius VII, as is stated in the case of Pergola brought before the Holy Congregation of Rites on December 17, 1824, § Reponit. Therefore, if the Carmelite church ceases to be regular in fact, its rights and privileges, considered in light of the Regular Canons, will cease and the common law

Translated by churchlatin.ai, a product of Boyne Archives

will prevail.

[*Latin ed. p. 31*]

31. Furthermore, it is thoroughly established by common law that it pertains to the parish priest to perform the funeral rites, as Barbosa states in *De officis et potestate Parochi*, page 3, chapter 26, paragraph 80, with these words: "Performing the rites over corpses belongs to the parish priest within whose parochial boundaries there is a church in which the corpse is buried, and not to the priests of that church." And so, a response was given by the Sacred Congregation of Rites in the case of the deceased who are buried in the church of Saint Celsus in Milan, on November 29, 1632. The Rota, before Lancetta, in decision 188, paragraph 1, states: "The Lords judged that it should be proceeded with a distinction: for indeed, the private right of exercising ecclesiastical functions, which are of parochial law, cannot be judged in the same way as the favor shown to the parish priest, to whom, without a doubt, with respect to any rector of another church or oratory within his parochial boundaries, the exercise of such functions pertains." And since the Episcopal Curia recalled the Decree of the Sacred Congregation of Rites of the City and the World, of the year 1703, confirmed by the Supreme Pontiff on January 12, 1704, it is noted that in such a Decree, in the twentieth question, among others, the following was proposed: "Does it pertain to the parish priest to perform the funeral rites over corpses buried in the aforementioned churches and oratories of confraternities?" And the response was: "Affirmatively, when the deceased is to be buried within the boundaries of the parish priest whose church or oratory it is." Monacelli, in *Formulario legale fori ecclesiastici*, page 2, title 13, formula I, paragraph 7, explains this Decree concerning the same question: "A similar legal decree is entirely correct; because, as is undoubtedly the right of burying one's parishioners is of the rights of the parish, as taught by Medie, *De sepulturis*, question 10, paragraph 1, and the Rota, before Coccin, in decision 1213, paragraph 2, it follows that the right of performing the funeral rites over corpses also pertains privately to the parish priest, as a connected and dependent matter; Samuel, *De sepulturis*, dispute 3, section 2, paragraph 9, and section 7, paragraph 16, there."

[*Latin ed. p. 32*]

Concerning the duties of the parish priest regarding funerals: It pertains to the parish priest to perform the funeral rites within his parish, even when the deceased is buried there, provided that the entire chapter is present at the parish church. It is of no concern to the presbyters of the clergy, unless they are acting by the commission of the parish priest, and this applies not only to secular churches within the boundaries of the parish, but also to regular churches within those monasteries which, by virtue of the Constitution of Innocent X, which begins *Ut in parvis*, are under the

Translated by churchlatin.ai, a product of Boyne Archives

jurisdiction of the Ordinary; in these, I say, it is not the Regulars, but the parish priest to whom the office of performing the funeral rites over the deceased belongs, as observed by Romanger in *ad synod. Gerund., I, j, lit. ç, c. J, n. 22*, where he gives concordant opinions. Therefore, if it pertains to the parish priest to perform funerals in such regular monasteries which are under the jurisdiction of the Ordinary, it follows all the more that it pertains to him to perform funerals in the regular church, whose regular community no longer lives there.

From this, certain observations are made concerning emoluments, of which we shall speak later.

THINGS WHICH ARE ADVANTAGEOUS TO THE REGULAR CANONS.

Conversely, it is advantageous to the Regular Canons that Innocent X, with his provident Constitution which begins *Instaurandae*, dated October 15, 1652, extinguished and suppressed the small regular monasteries in Italy and the adjacent islands, and reduced them to a secular status, reserving, however, the faculty for the Orders themselves to retain one of the monasteries which was subject to the law of suppression, if it should be expedient for some reasonable cause. Subsequently, the Constitution which begins *Ut in parvis*, dated February 10, 1654, restored these small monasteries to their former status, except for those for a reasonable cause; and at the same time, it was established that these monasteries and all persons, both secular and regular, residing therein, should be subject to the visitation, correction, and in every way to the jurisdiction of the Ordinary of the place, as if delegated by the Apostolic See, until the revenues of these small monasteries were sufficient to comfortably and effectively support twelve religious, etc. These are the monasteries in which Monacellus believes that the parish priest can perform funeral rites. But perhaps Monacellus has not considered that the Ordinaries of the places could have visited, corrected, and reformed such small monasteries, not by their ordinary power, but as if delegated by the Apostolic See. How, however, can it be inferred from this delegated power granted to the Ordinaries that these same monasteries are also subject in every way to the jurisdiction of the parish priests? I do not see it.

[*Latin ed. p. 33*]

The law concerning burials, enacted by secular authority, could only achieve this: that the Carmelites, being dispersed, would no longer enjoy those rights and privileges which belong to them when they reside in convents under regular discipline. However, it does not follow that the aforementioned church no longer belongs to the Order of Carmelites. Indeed, not only does it belong to the Carmelite Order, but within it, those rights

Translated by churchlatin.ai, a product of Boyne Archives

and privileges inherent to a church are also exercised by the Carmelite Rector, along with two religious persons appointed by the superior of the Order; and if the local Ordinary also participates in such matters, it does not demonstrate anything other than that the aforementioned church is no longer exclusively subject to the superior Order, but also to the local Ordinary. Moreover, when it is a question of a change in the status of regular churches concerning the burdens, rights, and privileges inherent to them, the authority of the Holy See must always intervene, as also demonstrated by practice, as in the aforementioned decree of Pergulana, December 18, 1824, in Fermo; the law concerning burials, November 21, 1840, in Ravenna; the decree concerning funerals, March 17, 1781, in Tivoli; and the law concerning interments, March 17, 1827. However, when it concerns a change in the status of a regular church into a secular church, the Holy See has not intervened in any way; it would therefore seem that the aforementioned church is still endowed with all the rights and privileges with which it enjoyed before its suppression. Therefore, since the aforementioned church has not ceased to be regular, it follows what the Sacred Rota weighed in the case of Romana, concerning the law concerning interments, May 7, 1792, § 10: "It has been repeatedly defined that it is in no way permitted to secular priests, nor to others, to enter regular churches with a cross erected, with a stole, and with a superpelicon, and to administer absolution to the dead there, to perform the office, and to celebrate Mass, and to perform funeral rites." Also, Barbosa, on the Parish Priest, p. 3, chapter 26, number 81, and others generally. Even if we were to assume that the church in question has become secular, it does not immediately follow that it has been deprived of the manner of burial or interment. Such a consequence does not follow, because it is not established in the aforementioned documents.

[*Latin ed. p. 34*]

34. The right of burial enjoys this privilege solely for the benefit of a regular community; indeed, since secular churches generally enjoy the right of burial, this right of burial should be considered a real right, inherent to the very temple itself. Regarding this matter, the Rota, before Merlino, in decision 54J, number 5, stated: "By secularization, privileges and rights pertaining to regularity are considered altered and abolished; in other matters, however, all rights, both active and passive, remain fully intact and unviolated for the Church itself, unless expressly revoked." Similarly, the Sacred Congregation of Councils, in *Ravennaten*, *Funerum*, March 17, 1781, dealt with the case of a temple belonging to a regular community, which passed into the possession of a Seminary. A dispute arose between the parish priest and the Rector of the Seminary regarding whether the right of burial had been extinguished. In favor of the Rector, among other considerations, it was observed that the extinction of the regular order could not be argued to cause the extinction of the right of burial in the

Translated by churchlatin.ai, a product of Boyne Archives

sacred place, because the right of burial is a real right, which adheres to the temple that contains burial places. The following question was proposed: "Is the full funeral rite due to the parish priest, when the deceased have been buried in the church of Saint Jerome?" The response was: "No, and moreover." Also, in *Tiburtina*, March 17, 1827, a similar case was considered, and the following questions were proposed: "I. Does the church of Saint Peter enjoy the right of burial in this case? II. Do the emoluments of the funeral rites performed in that church pertain to the parish priest of the deceased in this case?" The Sacred Congregation of Councils responded: "To I, affirmatively. To II, affirmatively, regarding the fourth portion of the funeral expenses, according to local custom." Finally, the case of Pergulana was brought up, the circumstances of which were related to this matter. At the end of the 18th century, the Congregation of Presbyters of Saint Philip Neri was established in the buildings of Saint Anne in Pergulana, and it obtained the administration and care of the temple of Saint Peter and its chapel, performing all ecclesiastical functions in these temples, including funeral rites over the bodies.

[*Latin ed. p. 35*]

Regarding the 35th canon concerning the burial of the dead, who possessed a pagan tomb there. However, due to the calamities beginning in this century, the aforementioned Congregation was suppressed, and with the authority of the Holy See, the building and temples were assigned to a Seminary, and afterward, the office of their custody and administration was entrusted to the Rector of the Seminary, a priest of the Oratory, by the Bishop of Perugia. But since the same temples were located within the boundaries of the parish church, controversies arose between the Rector of the Seminary and the Parish Priest concerning the emoluments and the office of burying the dead who were to be buried there. The question was brought before the Sacred Congregation under the following formulas: "I. Does the function of the Rector of the Seminary extend to non-parochial functions celebrated within the churches of the same Seminary? II. Does the Parish Priest, within whose parochial boundaries the churches of the Seminary are located, have a right to the mortuary functions of his parishioners who are buried there? III. What portion of the emoluments is due to the same Parish Priest on account of the aforementioned burial of parishioners? IV. Does the Parish Priest have a right to the mortuary functions of those who are not parishioners and are to be buried in the aforementioned Seminary churches?" The responses were: "To I, Affirmative. To II, Affirmative, according to the form of exempt churches, namely, up to the entrance of the church. To fully understand such a response, it is necessary to recall the information provided by the Ordinary for this purpose, which was as follows: 'The churches of the Oratory of Perugia, before the aforementioned Congregation was suppressed, enjoyed all the

Translated by churchlatin.ai, a product of Boyne Archives

privileges that religious houses enjoy, so that the Parish Priests did not presume to claim any rights whatsoever, either in performing burials or in celebrating other functions. All this arose when the Congregation was suppressed, at which time the Parish Priests believed..."

[*Latin ed. p. 36*]

36 Concerning the laws of burial: "Regarding section III, an affirmative ruling concerning the fourth part of the funeral expenses, according to local custom. "Regarding section IV, a negative ruling in all cases." From all of this, it was concluded that the Carmelite church, which we are discussing, still possessed the right to bury and conduct funerals, and was exempt from the jurisdiction of the parish priest; therefore, the parish priest could claim nothing from it except the customary fourth part of the funeral expenses. However, these civil laws, which prohibit burial in churches after the establishment of a public cemetery, did not apply; such "privileges and exemptions" had completely disappeared. However, the same presbyters of the Oratory resided in the houses adjacent to these churches, wearing not the usual vestments of the ancient institution, and one of them continued to maintain custody of the church, diligently striving to defend and preserve the ancient rights, despite the frequent complaints of the parish priests. With time, when Pope Pius VII decided on the construction of the new Perugian cathedral, it was decreed that the houses and the church of the Oratory belonging to the priests should be ceded for a seminary... The priest in charge of the churches maintained custody by the authority of the Ordinary, and therefore continued to perform the sacred functions within them as before, conducting funerals, especially since in the other church of St. Peter, there were several tombs belonging to wealthy families of Perugia. But when other parish priests in the city attempted to claim the customary fourth part of the funeral expenses if the deceased were parishioners, whether they had a tomb or not in the aforementioned churches; the parish priest of the cathedral, within whose parish the seminary churches were located, demanded whatever was due, deducting the fourth part of the funeral expenses if the deceased belonged to another parish, and the entire sum, along with a double offering for Masses, if the deceased were his own parishioners, and also demanded all the more solemn functions celebrated in those churches, claiming that they belonged entirely to him; hence, in order to resolve all these disputes, certain doubts arose. To resolve these doubts, although nothing was obtained from the diocesan synod of Cagli, nevertheless, custom and practice prevailed in many cities, whereby the churches of seminaries enjoy such privileges and exemptions, so that they are not subject to the jurisdiction of the parish priests, and their rectors, or custodians, have the full right to perform all functions, and to conduct funerals. This custom seems to be based primarily on the reason that the seminary church, with its granted exemptions, is immediately subject to

Translated by churchlatin.ai, a product of Boyne Archives

the jurisdiction of the Ordinary, from whom, just as the seminary itself depends, so too does the church of the seminary. This jurisdiction is not exercised by the Ordinary himself, but rather by the rector, and the priest to whom the custody of the seminary, and the church belonging to the seminary, has been entrusted. Nor is this new and unusual, since we see in the churches of the nuns that all...

[*Latin ed. p. 37*]

For the laws concerning burial, 37, enacted for the sake of public health, do not alter the ecclesiastical rights of churches, which has been defined on many occasions. Nor do these laws impede the authority of the Authors, or of the Holy Roman Rota, or of the Holy Congregations, which might seem to be contrary to these laws. It has been noted that such authorities either act concerning temples which are not at all exempt from the jurisdiction of the parish priest, or concerning those which do not enjoy the right of burial. Furthermore, it is true that the right of burial, which belongs to the temples, is one thing, and another is the permission granted by the Bishop to bury the dead in a certain temple. In the former case, all the benefits pertaining to the burial belong to the church that buries, except for the canonical portion due to the parish priest according to local custom; in the latter case, all the benefits of the funeral belong to the parochial church, as in Rome, in the decree concerning funeral benefits of July 28, 1731, and in others. With regard to the decrees of the Holy Congregation of Holy Rites of the year 1703, it has been noted that they were issued to clarify and restrain the controversies that often arose between parish priests and confraternities established in public temples or oratories, which are located within the boundaries of parishes: therefore, these decrees cannot be extended to temples which are entirely maintained by the parochial office by that priest who is chosen by the Ordinary to be the confessor of the nuns, and who, as parish priest, is held in common and is supported by the nuns. "Indeed, it would be a certain cruelty if the parish priest, especially within the boundaries of whose parish is located a Seminary, were to claim everything for himself, while the church provides the sacred furnishings; the custodian himself would expend his efforts, but there would be no reason either in favor of the Seminary, or in favor of the custodian himself. Since this is the case, it seems to me, given this custom, and the reason by which this custom is defended and supported, that it should be considered in favor of the Seminary, so that the churches, concerning which in this case, are considered independent and exempt from all the jurisdiction of the parish priests, and that the burials, and other functions, may freely be carried out and exercised by the appointed custodian." Thus far, the Bishop. Furthermore, these Apostolic Letters, by which these temples were assigned to the Seminary, also seem to support this exemption. Compare what I have adduced in Volume I, pages 85 and following, and page 124

Translated by churchlatin.ai, a product of Boyne Archives

therein.

[*Latin ed. p. 38*]

Regarding the 38th Canon concerning the burial of the dead, Parishes, as indicated in the title, are exempt from the jurisdiction of the Parochial Vicars, and possess the right to bury, and have their own Rector. Considering these and other matters, the following questions are to be resolved:

"I. Does the Church of the Carmelites still enjoy the right to bury, so that its Rector may perform the funeral rites over the bodies of the deceased within its own cemetery?

II. What benefits are due to the Parish Priest in this case?"

RESOLUTION: The Sacred Congregation of the Council, having knowledge of the matters discussed in the meetings held on September 16, 1871, decided to respond as follows:

I. Affirmative, with the reservation of the right of the Parish Priest of the deceased's domicile to receive the customary fourth part of the funeral expenses, according to local custom.

II. Negative, in the specific case under consideration.

FROM WHICH WE GATHER:

I. Although, according to ancient law, the right of burial belonged to all churches, and especially to parochial churches, nevertheless, according to more recent and special law, this same right belongs to several other churches.

II. With the introduction of the public cemetery law, this right of burial, with all its related rights, remains intact and protected, except for the material deposition of the body in the public cemetery, which must be carried out according to local custom.

1. From Clementine Decretals, previously cited, and from Extravagantiae Communes, previously cited, concerning burials, it is stated that this special right belongs to the Order of Preachers and the Order of St. Francis, and this is due to a private law contained within the body of the law, as the Canonists say. This right may also belong to other Orders, either by special Constitutions, or even by the communication of privileges. This right may also be granted within his diocese by the Bishop, provided that all formalities required for the alienation of church property are observed. This right may also belong to a church by a special custom, whereby the church is found to have possessed this right of burial from ancient times.

[*Latin ed. p. 39*]

Of the laws concerning funerals, 39, III. The churches of regular canons, which enjoy the right of burial, are also exempt from parochial jurisdiction, so that when a body is brought to the church of the regular canons,

Translated by churchlatin.ai, a product of Boyne Archives

all parochial rights and duties concerning funerals cease, except for the priest's obligation for the deceased. 1 However, in the use of this privilege, special agreements or customs must be observed, which may exist between parochial churches and churches of regular canons, as expressly stated in the final chapter concerning agreements (Pactis) in 6. If such agreements and special customs are lacking, which are usually found in diocesan synods, the provision laid down by Leo X in the Council of the Lateran Palace and renewed by the Holy Congregation of Councils on January 20, 1604, must be observed, in these words: "The Holy Congregation declares and ordains that, in no way, may any religious, whether of mendicant or non-mendicant orders, enter a parish with a processional cross or otherwise, to carry out or remove the funeral rites of the deceased, or to carry them in or out, unless the deceased's own parish priest has been called and is present, or unless he expressly consents or refuses to come." If the deceased's own parish priest is in another parish, as in the case at hand, we have another decree from the Sacred Congregation of Councils dated November 28, 1671, concerning the question: "Can the deceased's own parish priest, when passing through the parish of another parish priest in any diocese, freely and lawfully carry the body processionaly to the church of the regular canons, even without the request of the parish priest, with a stole and raised cross?" The Sacred Congregation answered: affirmatively. This entire decree, and other matters related to the subject, are explained in Volume V, pages 222 and following. Regarding entry into the churches of regular canons with a stole and raised cross, Benedict XIII, in the Constitution *Pretiosus*, issued on May 25, 1727, § 45, established the following: "To remove henceforth... the scandal of the faithful... we decree, by this perpetual law, that the cathedral chapter, the parish priest, the brethren of the Order of Preachers, and other religious communities, may proceed with funeral processions through each parish, with their own raised crosses, and may also carry them out in this way, as happens in other more solemn processions, and may enter the church where their brethren are buried, in the order in which they are walking, and after offering adoration at the altar where the Holy Sacrament is kept, or after the funeral services are completed, may depart; the parish priest may also enter the same church where the burial takes place, with a stole; and those associated with the deceased's body must also be with the parish priest, so that it may not happen that they are left behind in the streets and squares, and we command and decree, by Apostolic authority, that it is permissible to enter the parochial church, even with a raised cross. Notwithstanding all and each of the foregoing, and all other customs, even those that are unmemorable, to which we expressly and fully derogate; we declare and, if necessary, decree... that the raising of crosses, the carrying of stoles, and entry into churches in all and each of the cases enumerated,

Translated by churchlatin.ai, a product of Boyne Archives

and in any other similar cases, are null."

[*Latin ed. p. 40*]

40. The canonical law concerning burials, the fourth [item] pertaining to funerals, and determined according to the customs of the place.

IV. By the illegitimate suppression of Regular Canons and their dispersion, their temples do not lose, by that very fact, the right to bury [the dead]: for such a right, although perhaps acquired in view of the existing Regular community, once acquired, remains a real right perpetually attached to the temple, until it is canonically removed by that same right or the right is declared extinct.

V. By the possession of the right to bury in the temple, real rights arise for the faithful, either through established burial places of ancestors, or through ancestors buried there, which rights cannot depend solely on the variable fact of the existence of the Regular community.

VI. Moreover, in this matter, even if the Regular community were dispersed, that temple had not ceased to be of the Order of Carmelites with regard to property; but also in it, the Order of Carmelites was actually represented by the Rector of the Carmelites, established there by the authority of the superior Order and the local Ordinary.

"He can, indeed, exercise jurisdiction, or at least, in some way, impose judgment on everyone, and at any time and in any way, impose and inflict [it]." But this Constitution, along with eleven other Constitutions of the same Roman Pontiff, which extended the privileges of the Regular Canons, was revoked by Clement XII by the Constitution *Romanus Pontifex*, issued on March 29, 1732, and reduced to the common law, or to the law that was in force before that Constitution. After this revocation, the tribunals of the City judged according to the preceding norms of jurisprudence concerning the funerals about which we are speaking, as can be seen in *S. Rotam in Baren*. The law concerning burials before Aldobrando, January 12, 1733; November 29, 1743, before Vaio; in the Melevitana case concerning funerals, before Mellino, November 21, 1744, etc.

Formerly, there were Regular Canons who enjoyed the privilege of not paying the fourth portion of the funeral expenses to the parish priest; but this privilege was revoked by Benedict XIII in the Constitution *Romanus Pontifex*, issued on April 28, 1725, and included in the Roman Council; compare the case cited in Vol. II, page 158. Compare also the case reported in Vol. V, page 562, and those things which I noted there on page 569.

[*Latin ed. p. 41*]

Of the Laws Concerning Funerals:

41. VII. Neither the temples of Regular Canons are to lose the rights pertaining to funerals, even though, for some reason, these same temples remain under the jurisdiction of the Ordinary.

Translated by churchlatin.ai, a product of Boyne Archives

VIII. Furthermore, it is understood that the fourth portion of the funeral expenses does not pertain to the Parish Priest in whose parish the burial place is located; but rather, it pertains to the Parish Priest proper of the deceased, even if that Parish Priest belongs to another parish.

IX. Therefore, in the case mentioned, the fourth portion of the funeral expenses does not pertain to the Parish Priest T, but to the Parish Priest R of the deceased.

1 2. DIVISION OF A PARISH.

September 16, 1871. Summary of the case. In the diocese of G, recently established, there existed the extensive parish of N. Two *pagi*, A and B, were located further away from the parish church, and were administered by the Parish Priest through two so-called vicars or vice-parish priests. The *pagus* A, in the year 1855, was separated from the parish by Apostolic authority and erected into a new and independent parish. It appears that the Apostolic See already considered such a division to be sufficient: in Apostolic letters issued in the same year, in which the parish of N was assigned to a new Parish Priest, a further division was possibly to be made, as indicated by these words: "By these present letters, we declare that you must submit to legitimate authority in any arrangements concerning the aforementioned division of the parish, and in any other matters."

1. In the present circumstances, there exists the Decree of the Holy Penitentiary, which I cited in Volume III, page 151, which determines the rights of Regular Canons and Bishops. Also, see what I noted there on page 141, regarding the Rescript concerning the appointment of a Regular Canon as Parish Priest. See the Decree of the Holy Congregation of Councils, which you will find explained in Volume V, page 222 and following.

[*Latin ed. p. 42*]

42. Concerning the Division of a Parish: Now, the superiors from the *pago* B have presented a petition to the Most Reverend Father, in which, in their own name and in the name of the inhabitants, they state that in that region there exists a church under the title of the Immaculate Conception of the Most Holy Virgin, which has three altars and is sufficiently large to accommodate the entire population, which they say numbers approximately 800 individuals. Furthermore, they point out that the aforementioned *pago* is very distant from the parish church of N; and for this reason, they have especially concerned the Bishop of that diocese, urging him to erect that filial church into a parish; they conclude by asking that their wishes be granted for the erection of a parish for their spiritual benefit. After such prayers were presented to the Bishop, as the Parish Priest reported in writing, he stated that the canonical reason for the division of the parish should be considered, and how provision should be made both

Translated by churchlatin.ai, a product of Boyne Archives

for a suitable Parish Priest and for the maintenance of the Church; with all of this, it was sufficient. Indeed, the Bishop reported that the necessity of a new parish for the *pago* B had already been, in some way, known to the Holy See, since, in the new provision for the parish of N, the right was reserved to the Bishop to divide the parish, as I mentioned above; and thus, the Bishop proceeded as follows: "Several circumstances concur, which, if they do not demonstrate an absolute necessity, certainly reveal the spiritual good of that people, according to the holy canons, especially of the Council of Trent, Session 22, on Reform, chapter 4. The aforementioned *pago* B is located in the more remote part of the parish, which parish is larger in extent and in number of parishioners than all others except for the parish of the cathedral church. That *pago* consists of almost a thousand individuals, with a sufficiently honest level of wealth. Rarely do these faithful attend the parish church, nor do they see the Parish Priest except on the occasion of marriages, or for the Paschal precept, or for some other spiritual need, from which many matters worthy of attention remain unobserved or poorly remedied. For the words of a Vice-Parish Priest do not produce the same effects as the words of a Parish Priest. There are four priests in that *pago*, but one or the other is assigned to celebrate Mass."

[*Latin ed. p. 43*]

"The division of a parish adds burdens to the parochial church, which does not require so many priests, and thus the faithful of that place are deprived of the Mass, which sometimes happens on Sundays and feast days. Those things which are less suitable are removed through the erection of a parish, since these priests will be incardinated in the parish." After these remarks, the Bishop clearly spoke about the appropriate provision to be made for the new parish priest, indicating an easy way to adequately provide for both the aforementioned provision and the parochial church. Finally, he urged that, with the admission of such a new parish, the same parish should remain completely independent from the mother church, so that no opportunity for schism might be given in those regions.

1. A concise discussion. REASONS WHICH, ACCORDING TO LAW, ARE OPPOSED TO DIVISION. It has been observed, according to established custom, that canons are not applicable to the division of benefices, because they pertain to the appearance of alienation; and since division resembles alienation, all the causes and formalities required in alienation must be present, according to what the ancients have handed down, as in the chapter "Ad audientiam," paragraph 2, concerning churches being built, and elsewhere in more recent writings. Especially in the matter under consideration, where the complete division was being discussed, so that the divided church would be entirely separated and independent from the mother church. The most esteemed authors state that division is not permissible if another means exists of providing for the needs of the faithful (e.g.,

Translated by churchlatin.ai, a product of Boyne Archives

through a vicar or chaplain), as Barbosa writes in "Ius ecclesiae," book 2, chapter 2, paragraph 8, where he cites several authorities.

Here, if I am not mistaken, by "incardination" is meant that enrollment of which the Council of Trent speaks in session 23, chapter 6, concerning reforms. This enrollment can also be made by papal decrees after Holy Orders; compare the documents added in volume VI, page 583 and following.

[*Latin ed. p. 44*]

44 Regarding the division of parishes, he wrote: "It appears to be a just reason for establishing new parishes when the distance is such that it causes inconvenience to the people in receiving the Sacraments and in hearing the divine services, but only when that distance presents a difficulty for the parishioners in reaching the parish church to receive the Sacraments and hear the divine services... However, this is only the case unless there is present in a place that is not at all difficult or inconvenient, a chapel or church with a baptismal font and other necessities for a parish, and there a Rector Priest is placed to assist, as stated in Menoch., cons. 477, n. p, Ioan. Bapt. Costa, Remedia, 6, Alois. Rice, Resolutiones, 476, n. 6. But when the parish priest alone cannot provide for so many sick people at the same time, then there is not a just reason for dividing the parish, but rather for employing assistant ministers, as the Rota decided in decree 488 recent, n. 5 *in fine*. Therefore, the Holy Congregation judged that the Bishop, in virtue of the decree of the Council of Trent, chapter 4, *in principio*, cannot establish a coadjutor, but must certainly compel the Rector to add as many priests as are sufficient for the churches in administering the Sacraments, as Armendar, etc., reports." Therefore, the doctors have constantly taught that the division of parishes is to be considered a subsidiary and extraordinary remedy, and the Holy Congregation has followed the same opinion, as in Cassanen, regarding the division of parishes, dated December 17, 1740; in that case, the Bishop exaggerated the distance of a certain people from the parish church of Saint Julian, and, after the division of the parish, especially because of the size of the parish, which contained nearly three thousand souls, the clergy of the parish church finally protested against the division made by the Bishop, regarding the question: "I. Whether it is the case of the nullity of the division of the church of Saint Julian of the villages; and in this case, affirmatively: II. How it should be provided in this case." The Holy Congregation responded: "To I, affirmatively; to II, it is to be entrusted to the Bishop to appoint another coadjutor from among the participating priests, who will reside near the church of Saint Joseph, and there exercise the care of souls, according to the manner established by the same Bishop."

[*Latin ed. p. 45*]

The purpose of the division of a parish is to be determined, with an

Translated by churchlatin.ai, a product of Boyne Archives

exception from the obligation of serving in the choir of the church of Saint Julian. A case very similar to this one arose in Aquilana concerning the division of a parish, which was discussed on February 8, 1744. In that case, as well, due to the lack of solemnities and the absence of a necessary cause, the question was raised: "Whether the division of the parish church of Saint Paul of the Nets, and the respective new parish in the Villa, and the church of 'Saint Vitus,' can be approved by the Bishop in this case?" The Sacred Congregation responded: negatively, and the Bishop is to appoint a coadjutor priest in the church of Saint Vitus at the expense of the parish priest. Furthermore, it is noted that this very ancient jurisprudence, which requires both solemnities and urgent causes for the division of parishes, has not undergone any change through the Council of Trent, chapter 4, session 21, concerning Reforms. For in it, it is stated that in parishes "in which, because of the distance or difficulty, the parishioners cannot easily access the sacraments and attend divine services, new parishes may be established, even against the will of the rectors, according to the form of Alexander III, which begins: 'For our consideration has reached us that the Villa called H is so far from the parish church that, during the winter, when the rains flood, the parishioners cannot reach it without great difficulty, and therefore they cannot attend the ecclesiastical services at the proper time. Because, therefore, the aforementioned church is said to be abundant in revenues, so that, in addition to the revenues of that Villa, the minister can properly have the means of subsistence, we command that, if this is the case, you build a church there, and in it a priest, without any obstacle to the title, for the presentation of the rector of the larger church, with the consent of the founder, to provide for his support from the ecclesiastical revenues of the same Villa, taking care, however, that the appropriate honor be preserved for the mother church according to the resources of the place; which, indeed, seems possible, since the lord of the same Villa is willing to grant twenty acres of fertile land for the use of the priest. If, however, the person in charge of the mother church should refuse to present a suitable man, or should wish to obstruct this work, you nevertheless must see that this work is brought to completion, and you must not fail to appoint a good man, without any obstacle to the title."

[*Latin ed. p. 46*]

46. The necessity and utility of the dismemberment of a parish can lead to the division of the parish, as all authors teach, and as the Holy Congregation of Councils has widely affirmed, even after Trent. Therefore, since dismemberment is most abhorrent in law, and since it requires evident utility and necessity, as stated in chapter i, on ecclesiastical matters, section 6, it may seem that the requests of the inhabitants of parish B should be rejected, because such necessity or utility does not appear to be present for carrying out the dismemberment of the parish. Indeed, there is no neces-

Translated by churchlatin.ai, a product of Boyne Archives

sity: for it does not appear from the records that the extreme circumstances exist which constitute true necessity; for the inhabitants and the Bishop only assert that parish B is located in a more remote area from the parish church; but this is not sufficient to judge the distance of places, which is required for carrying out the dismemberment; nor do they demonstrate that the roads are difficult and arduous, so that the faithful can only access the parish church with great inconvenience. And if, as the Bishop asserted, the parishioners rarely saw their own pastor, this happened because they had a temple and a priest in a more convenient location, who would serve their spiritual needs; and finally, the Bishop himself admitted that several circumstances were present "which, if they did not demonstrate absolute necessity, certainly revealed the spiritual good of that people." These words, however, suggest some utility, but not necessity. Nor is there present that evident utility which the sacred canons require: for if one excepts the closer presence of a pastor, no other utility would result from this dismemberment; for nothing is lacking to the inhabitants of parish B in spiritual matters; and it has never happened that anyone in Le Conquet died without the sacraments, since they have a vice-parish priest, who administers the sacraments and is available to the sick, and who, as testified by the Bishop, strives with all his might to care for that people. With these things established, one might ask whether a new pastor could accomplish anything more.

[*Latin ed. p. 47*]

The division of parishes: 47. However, it has been customary for the Holy See to deny requests for the division of parishes, as in Gaeta on May 24, 1659, *Acta*, vol. 2, Decree, p. 632, and in Balneoregium on July 19, 1698. Similarly, the Sacred Roman Rota, consistently maintaining this position, has deemed it to be for the spiritual good of the faithful if a vicar is established in a more remote part of the parish, as stated in Decree 578, no. 4 and following, p. zç, vol. ç, recently published; in Leodium, the division was denied on February 1, 1712 before Falconieri, and again on July 3, 1713 before Crispo, and on July 22, 1714 and January 15, 1715 before Lancetta. Indeed, even in cases where the circumstances seemed more compelling, the Holy Congregation has rejected petitions for the division of a parish. This is demonstrated by the case of Lünen, Sarzanen, which was discussed on September 27, 1732 and January 24, 1733: for the parishioners who resided in the village of Meridia were diligently requesting that a new parish be established there, because the village was 1500 paces distant from the parish church, and the roads were so rough and difficult that neither could they attend Mass, nor could they receive the rudiments of the faith from the parish priest, and the sick often died without receiving the sacraments. The bishop acknowledged their just desires and proceeded with the requested division. However, the parish priest, to whom the inhabitants of Meridia

Translated by churchlatin.ai, a product of Boyne Archives

belonged, protested, although he promised to provide a suitable portion and other necessities. The Holy Congregation decided that a permanent vicariate should be established, with the provision of a suitable portion to be paid by the community of Meridia. Similarly, in another case in Novarien on May 17, 1749, although the roads were extremely difficult, so that even young and robust people, not to mention children and the elderly, could scarcely make their way to the parish church located on the mountain, especially during the winter, the division was denied, and provision was made for the needs of the faithful through a chaplain. And the division was denied in Saucianen on November 18, 1747, in Derthonen on June 11, 1766, and in Adrien on December 18, 1773. Nor can the increase in the number of inhabitants be cited as an objection: for, according to the Council of Trent, Session 21, chapter 4, concerning reforms, the parish priest must assign as many priests as are sufficient.

[*Latin ed. p. 48*]

48. The necessity of the dismemberment of the parish for the people. Indeed, in this case, since the inhabitants of the district B did not reach 1000, it cannot be said that they have increased to the point where a new provision is required. After these considerations, several points were noted regarding the suitability of a new parish, which, for the sake of brevity, we omit.

REASONS PRESENTED FOR THE DISMEMBERMENT.

On the contrary, it was observed that the Tridentine Decrees indicate distance and difficulty of access as causes for dismemberment. In this case, although the inhabitants of district B and the Bishop might not be able to fully describe, even with a pen, the distance and hardship of the roads, if it were considered that the parish N is the largest parish in the diocese, and that district B is located in the most remote part of the parish, it can easily be understood that the distance is such that it would cause very great inconvenience, especially during the winter months, to those inhabitants who wish to attend the parish church. However, this is quite sufficient, according to the aforementioned Tridentine Decree, to allow for a division. To demonstrate this distance, the inhabitants of district B presented a chorographic map of the parish, from which it was clear that the parish church and district B were located on opposite extremes.

It cannot always be usefully opposed that opinion which requires dismemberment as a subsidiary and last resort, rather, it is more appropriate to suggest the appointment of a vicar in the parish to be dismembered: for this remedy should not be considered so general as to be applicable in all cases; and this is also evident from the practice of the Holy Congregation, which has often granted dismemberment due to the distance of the places,

Translated by churchlatin.ai, a product of Boyne Archives

as in Lünen.

[*Latin ed. p. 49*]

Dismemberment of the parish of Sarzana: July 16, 1712; Papien: April 10, 1717; Comen: December 5, 1765; Fermo: December 15, 1759; Novare: December 13, 1765; Ventimiglia: August 8, 1818; Imola: June 7, 1820; Fiesole: June 4, 1836; Melevis: February 4, 1843. And it is noted that, according to Cardinal De Luca, in his annotations to the Council of Trent, discourse 16, number 2, a certain rule cannot be given in such cases, since the judgment depends on the individual circumstances. Thus, the aforementioned Cardinal De Luca wrote: "In this matter, a certain general rule that can be applied to any case cannot be established; therefore, it is evident that those are mistaken who, with some Resolutions of the Holy Congregation, or with Roman Decrees, or with the traditions of some Doctors, proceed solely on the letter in matters of this kind, when it is rather a question of the bare fact, to be decided according to the particular quality of each case and the individual circumstances." Also, Leurenius, *Forum Beneficiorum*, volume 1, chapter 3, question 15c. Furthermore, in this matter, these circumstances also concurred: that the petitioners had already been promised the dismemberment of the parish, and that the Apostolic See had in some way recognized the necessity of the dismemberment; if their requests were rejected, there would be a fear of hatred and animosity between the parish priests and the parishioners; moreover, an example existed of another part of the same parish having already been dismembered for the same reasons that were being presented for the present dismemberment; since, therefore, no one disagreed, and the dismemberment was desired by both the Bishop and the parishioners, it seemed that the dismemberment should be carried out. With these and other considerations, the following question was proposed for resolution: "Is there a place for the dismemberment of an old parish and the erection of a new parish in this case?"

RESOLUTION. The Holy Congregation of the Council, having knowledge of the matter on September 16, 1871, decided that the answer should be affirmative, according to the opinion of the Bishop. *Acta*, volume VII, section LXXIV, number 4.

[*Latin ed. p. 50*]

50. Concerning the Dismemberment of Parishes: I. The dismemberment of parishes, according to ancient jurisprudence, was considered as an alienation of ecclesiastical property; II. Therefore, such dismemberments were subject to the same laws that governed alienations. III. Such laws consisted of the existence of a canonical cause; namely, a necessity or evident utility, known in judgment; and the observance of solemnity, that is, the intervention in the cause of those whose dismemberment was concerned. IV. It was not any necessity, or evident utility, that was considered as a canon-

Translated by churchlatin.ai, a product of Boyne Archives

ical cause for dismemberment, but only that necessity which could not be adequately remedied by a parochial vicar or chaplain. V. This canonical jurisprudence began to decline somewhat in the past century; so that examples have been given of the dismemberment of parishes in places where the needs of the people could have been adequately served by a parochial vicar.

1 1 As Cardinal De Luca wrote in his Annotations to the Council of Trent, discourse 16, number 2, "it cannot be established a certain rule applicable to every case, and this holds not only in causes of dismemberment of parishes, but in any kind of cause: for when it is a question of applying the law to facts, and the facts are indefinitely variable, there cannot be a certain rule applicable to every case; which everyone easily understands." But it is one thing to inquire whether there is any rule applicable to every case; it is another thing to inquire whether there are general norms by which a certain kind of cause is governed. The first inquiry is almost absurd; the second inquiry, if it did not have a positive answer in all cases, would not only cease to be canonical, but any jurisprudence would cease to exist. But what are the norms that govern the dismemberment of parishes, if we inquire about the supreme ones? They are those written in the law, namely, the Tridentine Decree, chapter 4, session 21, on Reform; but if we inquire about practical norms, by which the Tridentine Decree is to be carried out, these must be taken from the decisions of the supreme tribunals in this kind of cause. Furthermore, if we consult the ancient decisions of the Holy Rota, it will appear constantly that the dismemberment of parishes has not been admitted, if the necessity could have been adequately provided for by a parochial vicar; so that the dismemberment has constantly been considered as a last resort. The Holy Congregation of the Council of Trent also gave its interpretation of such norms, as I know from many resolutions that I have consulted.

[*Latin ed. p. 51*]

Dismemberment of Parishes 51 VI. This practice has become less frequent in recent centuries, and an example of this is being presented at the present time. REGARDING A DISPENSATION FROM IRREGULARITY, March 24, 1871. Summary of the case. Father Joseph, because of his deafness, was unable to hear the voice of the minister responding during the celebration of Mass; therefore, considering himself irregular, he requested a dispensation from irregularity. The Bishop commended him and considered him worthy of grace. OBSERVATIONS FROM OFFICE. Besides the usual rulings of ecclesiastical discipline, which are often noted in such cases and can be read in various similar cases reported in these annals, the following points are noted in this matter: namely, it was stated that Joseph appeared to be irregular, because his deafness prevented him from properly performing the duties of his office. As an example, the case of Treviri

Translated by churchlatin.ai, a product of Boyne Archives

was cited. Regarding a dispensation from irregularity proposed through a summary of the case on January 27, 1855: this appears to be the only case of this kind that has not been brought before the Sacred Congregation, except after repeated discussions of similar cases. However, this practice, which originated from the ancient jurisprudence that preceded the Council of Trent, has gradually declined since the middle of the last century, so that the evident benefit to the Church has not begun to be considered with such rigor as to be equated with absolute necessity, but rather with much greater leniency: which, indeed, seems more in accordance with the cited Decree of Trent. Therefore, in recent practice, very little, if any, consideration is given to the subsidiary or extreme remedy, if it appears to be of sufficient benefit to the faithful, and if there are sufficient revenues available to benefit the new parish priest and the parish church; therefore, the dismemberment of parishes is not easily decided; or, if it has been done by the Bishop, it is not so easily overturned, as formerly, due to some defect or irregularity. Several examples of these matters can be found in these annals.

[*Latin ed. p. 52*]

52. A dispensation from irregularity is granted by the Treasury of Resolutions of the Holy Congregation of the Council, as is evident from the exposition of the same cause from Treves. In that case, the matter concerned the promotion of a deaf man to the sacred Tonsure and Orders, who, although he could not afterward preach, nor hear the sacred confessions due to his deafness; nevertheless, he strongly desired to become a priest, in order to celebrate the Mass. And the Holy Congregation responded: "For the granting of a dispensation regarding the aforementioned defect, for the habilitation to receive, with due observance, the first clerical tonsure, and also the lesser and sacred Orders up to the Priesthood, inclusive, with the consent of the Most Holy [Pope]." However, in the present case, the matter does not concern the promotion of a deaf man, but a priest to whom deafness subsequently arose. After prayers were presented to the Holy Congregation of the Council on March 24, 1871, a rescript was issued: "For the granting of [a dispensation], according to the form and manner to be prescribed by the Ordinary, with the consent of the Most Holy." FROM THIS RESCRIPT, IT MAY BE GATHERED: I. The Holy Congregation did not use the usual formulas: "for the granting of a dispensation and habilitation," which it usually employs when dealing with a priest who has become canonically irregular due to a subsequent physical infirmity, which, whether due to shame or danger in performing sacred actions, renders him incapable of celebrating Mass. II. Why should deafness in the case of someone being promoted not be judged in the same way as deafness that subsequently befalls a priest? III. They are not in the same condition, the one who is deaf and desires to be initiated into the sacred orders, and the one who is already a priest and subsequently becomes deaf. The former,

Translated by churchlatin.ai, a product of Boyne Archives

because of his deafness, is incapable of exercising the principal functions that are proper to the ecclesiastical state, such as, for example, the ministry of preaching, hearing the sacred confessions, or even celebrating Mass, and is not very efficient in other offices that are consistent with the ecclesiastical state. Therefore, a deaf man who desires to ascend to the Priesthood, since he cannot properly exercise these functions, requires a certain dispensation; for the sole ministry of a priest is not the celebration of Mass, which, even if celebrated due to deafness, is not entirely efficiently performed, since he does not hear the responses of the clergy. The latter, that is, a priest who subsequently becomes deaf, remains physically hindered from exercising the aforementioned ecclesiastical ministries, the exercise of which...

[*Latin ed. p. 53*]

Dispensation from Irregularity 53. III. It cannot be inferred from the present topic that a Priest is irregular for celebrating Mass if he has become deaf. IV. However, it can be inferred that an Apostolic dispensation can be suitably requested, although it does not seem absolutely necessary. 1. The reason is that neither a dispensation from the law, nor legal capacity, would help; rather, the ministry to which he will be more suited is undoubtedly the celebration of the Mass, which he will be able to celebrate more efficiently than another. This cannot be inferred, because it concerns a simple indulgence granted. From an indulgence or a grace obtained, a certain contrary law cannot be deduced, when this law is not otherwise established. Often, indulgences are granted because there is doubt whether a contrary law exists; and when the matter is not clear, the prayers of the petitioner are considered through the indulgence or through assent to the prayers. And this generally. Furthermore, in the topic, the formula of the response sufficiently indicates that the Holy Congregation did not use the usual words of a dispensation from a law prohibiting and of a qualification, by which Joseph would be legally qualified to celebrate Mass, but rather, if he needed it, a grace was granted, and the matter was left to the Ordinary to prescribe the manner and form for the celebration of Mass, should any inconvenience arise, for example, if Joseph were to chant the Mass, etc. The entire reason for irregularity would be derived from the fact that the deaf person does not hear the cleric responding; but this reason does not seem to lead to irregularity, because it is not shown that there is an obligation to hear the responding minister. Certainly, an obligation to hear the minister's response could arise from some law or from the nature of the thing; this law does not seem to exist; nor does it seem to arise from the nature of the thing, because one thing is the office of the responding cleric, another is the office of the celebrating Priest, so that they are entirely different offices; therefore, it is sufficient that each one fulfills his office. Indeed, Pirhing, I, title 20, on defects, n. 5, wrote that a deaf Priest can celebrate privately without a responding cleric, and that an absolutely necessary Apostolic

Translated by churchlatin.ai, a product of Boyne Archives

dispensation is not required; although I do not think this is true, although the rest that the same author wrote seems true: for he wrote: "From the same chapter on impotence, or impediment, the use or exercise of the order cannot be ordained for a blind person, a mute person, and a deaf person, according to Canon 77 of the Apostles, where it is stated that this applies to ordination as a Bishop; although one who has become completely deaf after receiving the orders, can celebrate privately without a responding minister, for which an Apostolic dispensation is not absolutely necessary, but one can suitably request it from the Pope, as Navarr. teaches, I, 1, counsel 6 and 7, n. 3, on defects." And if the reason for inconvenience is derived from the fact that the deaf Priest does not know when the responding cleric has stopped, so that confusion could arise between the responding cleric and the celebrating Priest, which could happen, for example, at the beginning of the Introit; it is answered that this is not easily possible for one who is accustomed to celebrating Mass through experience, and finally, this inconvenience can be avoided not only by...

[*Latin ed. p. 54*]

FROM THE HOLY CONGREGATION FOR THE COUNCIL OF TRENT, SPECIFICALLY ASSIGNED TO MATTERS OF MARRIAGE, on the 27th of January, 1872. With a more flowing pen, I shall explain this case, both because the Canonist has most accurately expounded all things in his careful deliberation, leaving nothing wanting, whether in fact or in law, and also because such cases readily serve as examples for ecclesiastical courts. A summary of the facts. A woman from Caietana in Italy was born in a rural parish of Saint Nicholas, near the city N; eight years after her birth, she departed alone to join her aunt in said city N, which is very populous in Italy. Afterwards, she resided for several years with relatives and kin in other cities, until, returning to the city N, after the death of her only brother, her mother, and her father, she married the man A. During the time that her husband lived, she had two children; and afterwards, from the year 1859, when she became a widow, until the present time, she has resided in the same city N, although she has been heard four times, and also seen. Finally, these are the matters concerning which the Bishop is responsible, so that he may diligently ensure that the sacrifice is treated with due honor, and that he may correct much greater inconveniences, which are not infrequently committed by priests, either through negligence, or even through weakness, such as those who, through illness or old age, have become so feeble that they cause boredom to the people listening to Mass, due to the excessive time that they occupy in the celebration because of their own weakness. However, the canonical irregularity of which we are speaking does not arise from any other bodily defect, than from that which might excite admiration or scandal among the people; or even, apart from admiration or scandal, from the danger involved in the most sacred action

Translated by churchlatin.ai, a product of Boyne Archives

to be performed, which is contained within the Canon of the Mass. Neither of these causes seems to apply to a priest who has become deaf.

[*Latin ed. p. 55*]

Marriage 55 changed her parish residence from one parish to another. But from the month of May of the year 1863 until the year 1869, she resided there in the parish of St. Nicholas. Although she lived in the city of N and resided in the parish of St. Nicholas, nevertheless, during the summer or autumn months, she spent about a month with her sister in Gaeta, along with her children, for the purpose of rural life: for her sister had moved to reside in the parish of St. Nicholas, near the city of N, where Gaeta was born. Meanwhile, Gaeta, in order to provide for herself and her children, received several men as guests in the city of N, and provided them with lodging. Among these was a certain Frederick, a Swiss by nationality, a Lutheran by religion, and a lithographer by trade. He had been known to this woman since the year 1859, when the husband of Gaeta died; and she had subsequently offered him, with a view to future marriage, a house in the parish of St. Nicholas, which she inhabited with her own expenses and her household, in the name of the same Frederick. Frederick also visited the parish of St. Nicholas several times, and stayed there for a few days; but he never did so with the intention of acquiring any residence there; for he went there either for the purpose of rural life, or to visit Gaeta, whether she was living there in the summer or autumn. Thus, through common living and sustenance, and through familiarity, Frederick decided to marry Gaeta, although he was twenty-eight years old, and she was thirty-three years old, and furthermore, she was a widow with two children. The betrothal was entered into privately, without any consideration of differences in religion. However, when they learned that no priest in the city of N would consent to this marriage without a dispensation from the Apostolic See, and that no such dispensation had been requested or obtained, Frederick, believing that either the priest of the origin or the priest of the domicile of one of the parties could validly assist in the marriage, chose the priest of the origin of Gaeta, that is, the priest of St. Nicholas, who, due to his advanced age or infirmity, would easily have been willing to perform the marriage.

[*Latin ed. p. 56*]

56. Concerning Marriage: When Frederick requested that the parish priest arrange a wedding banquet for him and his fiancée, Caietana, in Gaeta, Frederick asked if the priest would be willing to officiate at the wedding. The priest, in his own judgment, resolved all the difficulties that might arise in contracting this marriage, as if nothing would impede it. He proceeded in the following manner: After receiving from Frederick a certain document, written in the German language, which he did not understand, he administered the sacrament of baptism to Caietana,

Translated by churchlatin.ai, a product of Boyne Archives

under the condition that Frederick would accept any ritual whatsoever as necessary for the marriage; and on the same day, on a feast day, after only two announcements had been made in his parish church, omitting the third, as if it were not necessary, he considered everything to be properly prepared. Indeed, on July 18, 1863, Frederick and Caietana, together with two witnesses from the city of N, went to the parish priest of St. Nicholas and asked him to officiate at the marriage. Following the custom, the priest led them to the parish church; he inquired of the bride and groom, and of the witnesses, their names, not once, but repeatedly; and finally, he inquired of the bride and groom about their mutual consent to the marriage, according to the form prescribed in the Rituale (although, in the words he used, the language was very unclear). However, when the priest asked Frederick, he gave an affirmative and repeated answer; but Caietana gave no answer whatsoever: and it cannot be determined from the records of the case whether she expressed her consent in any way, for example, by a sign, a modulation of her voice, or a gesture. It is only recorded that Frederick stated that Caietana willingly accepted the ring that had been blessed by the priest and presented by him. Nevertheless, the priest proceeded with the ceremony, and, accompanied by the bride, groom, and witnesses, he returned home and dictated a testimony, which he wrote in the marriage book, with Frederick himself writing it. However, in this testimony, it is not recorded that the priest asked the bride and groom whether they were willing to be married, nor that he formally joined them in marriage through words, as is prescribed in the Roman Rituale (in form 3); but only that Frederick was married to Caietana. It should also be noted that, scarcely had the bride and groom left the church,

[*Latin ed. p. 57*]

With fifty-seven witnesses, it was stated that in Gaeta, a woman declared to the priest who questioned her, in the presence of others who heard her and did not contradict her, that she had not received any response from him. Indeed, there were those who added to these statements, and those who remained silent on the matter, for fear of giving anyone an opportunity to proclaim the nullity of the marriage. With such circumstances surrounding the beginning of the marriage, scarcely had the first month passed when quarrels, all manner of insults, and grievous injuries occurred, even to the point of blows. The woman, having been wronged by her husband, and the husband, acting out of jealousy, brought complaints to the civil authorities. To all of this, were added warnings from their own priest, that is, from the priest of the parish, who, moreover, had instilled a grave doubt in the woman's mind, and in the man's mind, regarding the validity of the marriage. As a result, after approximately four months from the date of the marriage, that is, on November 2, 1863, Gaeta presented humble petitions to the ecclesiastical court, drawn up by this very priest, requesting that

Translated by churchlatin.ai, a product of Boyne Archives

the marriage be declared null, as if it had been celebrated clandestinely. Upon receiving this petition, the Ordinary, after hearing both Gaeta and Frederick, and after considering, in particular, the matter of the clandestine celebration, appointed a judge on November 12, 1863, to proceed with the case, in accordance with the order of law, up to the publication of the process. However, all the procedural acts, once begun, were suspended for five years, because the witnesses who were present at the marriage were summoned to court, but never appeared. Finally, on November 24, 1868, the procedural acts were resumed, due to a petition presented by Frederick, in which he requested that the case, which had long been initiated by Gaeta, be proceeded with. Thus, the case, raised from the dust, proceeded with the procedural acts in accordance with the Benedictine Constitution *Dei miseratione* and the Instructions of the Sacred Congregation of the Council, published on August 22, 1784, especially with regard to the formalities that are required for the validity of the acts, as stipulated by that Constitution. (Reference: The Constitution is found in Volume IV, page 346; the Instruction is found in Volume I, page 439.)

[*Latin ed. p. 58*]

58. Concerning the form of the process, it appears that nothing was omitted which might be desired regarding the express appointment of a judge, or a judgment, who would have the power to proceed, to judge, and to decide; concerning the constitution, the oath, the presence of the defender of the marriage by office in each judicial act, and the examination of witnesses, according to the aforementioned Benedictine Constitution, §§ 4, 6, 7. Likewise, the spouses were duly examined, and they reaffirmed, under oath, those things which they had previously stated extrajudicially, with a few things explained more clearly. Similarly, other witnesses who could be found were examined under oath, both by the procurator of the spouses and by one and the other defender of the marriage. However, it is not understood why the first and second defenders of the marriage did not request the testimony of a seventh witness by any means. Indeed, the Instruction of the Sacred Congregation [for the Holy Office] prescribes this testimony indiscriminately in all causes which concern the validity of marriage, although it requires it primarily in those causes which are taken up under the head of impotence. But this, and similar things, do not render any judicial acts invalid, according to the cited Constitution and Instruction, nor did they seem absolutely necessary for ascertaining the truth in this matter. The depositions of the spouses and witnesses, begun under oath and completed with a new oath, seemed sufficient for the resolution of the present cause. Thus, it was truly felt by the judge, who was only delegated to construct and complete the process, as well as by the defender of the marriage, and by the procurator of the parties. Moreover, since the parish priest of St. Nicholas and the aunt of Caietana had passed away, and one

Translated by churchlatin.ai, a product of Boyne Archives

witness, who had been present at the marriage, had left his residence, and it was not known where he resided, the procurator of the spouses requested that, on November 19, 1869, the process be published by the Ordinary, that a judge be appointed to investigate and judge the cause, and that the defender of the validity of the marriage, as well as the legal representative of the spouses, between whom the dispute had been contested, be ordered to convene on January 7, 1870, to discuss the cause, and to present their conclusions of fact and of law in the records.

[*Latin ed. p. 59*]

Marriage 59. The parties obey this decree, and the aforementioned arguments are presented. Furthermore, the defender of the validity of the marriage, among other things, observes: Frederick, being a heretic, is not subject to the law of the Church, which is promulgated only for Catholics, such as the law that requires marriage to be celebrated before one's own parish priest. Nor does it matter that one of the contracting parties is Catholic; for it was argued that Frederick was granted by Benedict XIV an exemption from the law of Trent, either because of the place where he resides, or because of the society in which he lives. Benedict XIV, in his work on the diocesan synod, I. 6, chapter 6, paragraph 12, stated that both reasons are applicable to the present case, and indeed are confirmed by the declarations of Benedict XIV of April 3, 1752, concerning the validity of Helvetic marriages. Furthermore, it does not matter that Frederick contracted the marriage in Italy, where the law of Trent was duly promulgated, since even elsewhere clandestine marriages of heretics are valid, even though the Decree of Trent has been promulgated. Moreover, the Holy Congregation of the Council declared on March 16, 1780, that it is necessary to overlook the validity of marriages contracted between heretics, a tacit overlooking that implies approval, and from which a privilege is derived with the Catholic party. These points are in agreement with the declarations of Pius VIII and Gregory XVI, who taught that mixed marriages contracted clandestinely, although illicit, are nevertheless valid. Furthermore, the spouses, it was argued, had another domicile in the parish of St. Nicholas, and that Caietana frequently visited it with the intention of acquiring a domicile there; this intention was sufficiently declared and presumed, both from the fact that the nuptial blessing was received from that priest, and from the testimony of the same priest, who had written in the marriage book that both spouses had a domicile in his parish. And if these arguments were to hold, the defender of the marriage continued, then Frederick and Caietana could indeed have entered into marriage before any priest, since Frederick, having migrated from Helvetia, was traveling around and living a vagrant

Translated by churchlatin.ai, a product of Boyne Archives

life.

[*Latin ed. p. 60*]

60. While still maintaining the relationship of marriage, he has established neither a domicile nor a quasi-domicile anywhere. Conversely, the advocate for the couple, after deducting a few exceptions, declared that the nullity of the marriage was evident, either due to a substantial defect in the consent on the part of the woman from Gaeta, or due to the vice of clandestinity, since the marriage was entered into not before one's own parish priest. Therefore, the judge, delegated to pronounce a judgment in this case, after considering both arguments, whether in writing or orally, finally, on January 20, 1870, pronounced this definitive judgment: "It is established that the marriage which Friedrich N. N. and Caietana N. N. presumptuously entered into on July 18, 1863, before the parish priest N. N. of Saint Nicholas, is null, due to a defect in the jurisdiction of the parish priest present." From this judgment, the defender of the marriage, according to the procedures cited in Const. Dei miseratione § 8, duly appealed to the Holy See, or to the Sacred Congregation of the Council, and requested that the judgment, conclusions, and other acts of the case be transmitted, notifying the couple's procurator. Therefore, the acts of the judicial proceedings completed in that Archiepiscopal Court were transmitted to Rome by an authentic copy, and the General Vicar wrote to the Eminent Prefect of the Sacred Congregation of the Council: "that if any matters pertaining to the form of these proceedings have not been duly carried out, given the special circumstances in which this Court is situated, that the Most Blessed Father may deign to grant a benevolent dispensation, considering these circumstances." Then the Holy Father, in order to spare the expenses of the parties, ordered that such a case be handled economically in the stage of appeal, that is, by appointing a Theologian and Canonist who would write their opinions in favor of the truth in this case, and a defender of the marriage, who, according to his office, would make observations for the defense of the marriage, to be presented before the Sacred Congregation of the Council.

[*Latin ed. p. 61*]

Marriage, Section 61. A concise discussion. I shall present, in a concise manner, the opinion of the Canonist, who fully expounded this case. The Canonist observed that a complete and accurate determination of this case could depend on three questions: 1) whether, from the judicial records, it is certain that there was a mutual consent to the marriage in the present time; 2) whether the Parish Priest of St. Nicholas was the proper Parish Priest of either of the parties; 3) whether the validity of the marriage can be maintained based on the fact that Frederick belonged to the heretical sect.

Translated by churchlatin.ai, a product of Boyne Archives

FIRST QUESTION. The Canonist observed that no one denies that, for the validity of a marriage, true consent is required, a consent that is mutual, present, and manifested by words or other external signs. On this matter, Pirhing wrote in book 4, title 1, number 82: "For the validity of marriage, it is not sufficient that the contracting parties consent to the conjugal obligation in the present time, or that they have some agreement; but natural law also requires that they express this consent, and that they mutually accept it, as is clear from c. Licet de sponsa duorum; where, after it is said that marriage is contracted by a legitimate consent in the present time between a man and a woman, it is added: so that one receives the other with mutual consent expressed by customary words, or by other external signs, as mentioned above. The reason is, because no human contract can begin unless the will of each party is expressed, and mutually made known to the other."

Previously, Sánchez had written in *De Matrimonio*, I, 2, dispute 10: "It is certain among Catholics that internal consent is not sufficient, but it must be expressed by words or signs. Wycliffe held the contrary, and he was widely condemned by the Waldensians, etc." And he adds another reason, that marriage, as a sacrament, must be perfected by a sensible sign; and he concludes: "The Council of Florentino, in its Decree..."

[*Latin ed. p. 62*]

62. Concerning Matrimony, in the section "De Sacramentis," where he discusses each Sacrament individually, he stated: "Consent, expressed through words in a regular manner, constitutes marriage." Where he does not state that words are necessary, but rather indicates the opposite, since he does not say that words are *always* used, but rather "in a regular manner," that is, in a common way." Ibid., disp. j, n. The Canonist, having considered these principles, observed from the judicial records and reasons that could legally be adduced that Caietana's consent may have been lacking, and conversely, that the circumstances, which seem to suggest its presence, did indeed exist, such that at least implicitly and for external appearances, the consent of the woman could be argued and understood by the Parish Priest and the witnesses. It was argued that Caietana's consent was lacking based on her testimony, in which, after being questioned repeatedly and under oath, she stated: "Truly, I said nothing," in response to the Parish Priest's question, "because it did not seem to me that such a marriage was being properly performed, since there had not preceded it the consent given before the publications, according to custom; Frederick was not a Catholic, and we went there because it had been said to us that no Parish Priest in the city N. would be present at our marriage; therefore, since it did not seem to me that the marriage was being properly begun, I did not know what intentions I had," and that "the accumulation of those circumstances repeatedly caused me to laugh."

Translated by churchlatin.ai, a product of Boyne Archives

Having given this testimony, it certainly gives rise to a strong presumption that the woman did not give her consent, and that the marriage was not only illicit but also invalid. Another witness testified: "After leaving the church, Caietana and I spoke about the marriage, and she said to me: 'Although it seemed to be a complicated matter, nevertheless, it would be considered valid, because she had given the impression that she had her own home there.'" Frederick also mentioned this conversation in the records. Furthermore, many Doctors, along with Leurenio, *form. eccl.*, I. 4, *qu. c*., argue against Sánchez, stating that if someone even falsely believes that an impediment is present, they do not validly consent.

[*Latin ed. p. 63*]

Marriage 63: It is possible for a marriage to take place, because it is absurd to say that consent can be given to something that is impossible for the person giving it, even if the impediment is unknown. Furthermore, both Frederick and the witnesses testified that they did not hear any words spoken, nor did they observe any external signs indicating consent. It is not permissible to appeal to presumptions of law that were in force before the Council of Trent; for before that time, clandestine marriages were indeed illicit, but valid; and as Barbosa wrote, *De off. Episc.*, p. 2, note 3, no. 148. The Council of Trent abolished presumed marriages and decreed that only those marriages could be valid that could be proven in court. Therefore, a marriage cannot be presumed to have taken place after the betrothal. Among other things, the Canonist brought up the following: One of the witnesses to the marriage, who was present at the trial, when asked about the consent of Caietana during the celebration, said that he knew nothing; nor did he know whether the parish priest had questioned the couple, nor whether they had given their consent; and that he had perceived nothing. Therefore, the Canonist raised another question, which he did not treat separately, but connected with the main question of the lack of consent. This question could be presented separately as follows: If the witnesses are physically present, but perceive nothing or observe nothing, can it be said that a marriage was celebrated according to the form of Trent? And does the lack of this perception carry with it the nullity of the marriage? I will say nothing about this question, since its solution requires a more extensive investigation; I will only mention what the Canonist brought up. He argued that a person is not considered to be present by law if he is not present in a human sense, understanding and aware of what is being done, as stated in 1 Corinthians 209, in the section on the word "sign"; where it is written: "Before Titus, having ordered something to be done, he does not seem to have been present, unless he understands." And this is confirmed in the celebration of marriage by the explicit words of the Council of Trent, session 24, chapter 1, on the Reform of Marriages, where it is written: "The parish priest, having questioned the man and the woman, and having

Translated by churchlatin.ai, a product of Boyne Archives

understood their mutual consent, or having said, etc." Furthermore, the Council of Trent required the presence of the parish priest and witnesses by a decree that renders it invalid, so that the Church may be certain that a marriage has been contracted; therefore, the parish priest and witnesses must be present in such a way that they understand and are aware of what is being done; it is therefore necessary that they perceive, in some way, the consent of the parties, whether by hearing the words, or by seeing the signs of mutual consent, Sánchez, book 3, section 39, nos. 1-6; Pirhing, book 4, title 3, no. 22; Leurenius, title 5, question 153, no. 2, with common opinion. Compare the Instruction of the Sacred Congregation of Propaganda Fide in volume 6, page 446.

[*Latin ed. p. 64*]

Concerning the question of demonstrating a lack of consent and, consequently, the nullity of marriage, the following was considered. On the one hand, other reasons were weighed that militated against the marriage, showing that, in the external forum, it could not be certainly judged to be null by this head of marriage. For it was considered that such circumstances were present, preceding, concurrent with, and following this marriage, that from them, even if not explicitly stated, a very probable implicit consent to the marriage could be inferred. Indeed, it is established from the records that, in Gaeta, after the commencement of the betrothal, which was somehow private and invalid, on a certain day, the woman spontaneously went to the parish of St. Nicholas with Frederick and two witnesses, and requested the priest to celebrate the marriage. It is established that the priest agreed to assist at the marriage. It is established that she knelt before the priest and the witnesses in order to express her consent. Repeatedly, she responded to Frederick; and if the woman did not respond after the man's words, she is understood to have accepted it. Both testified as follows: Frederick stated: "Frederick affirmed twice (thus, the woman); then the priest blessed the ring, and gave it to Frederick, who placed it on my finger." Similarly, the woman testified: "The priest blessed the ring, which I willingly accepted when Frederick placed it on my finger." However, "if the words of one precede (as Sánchez teaches, *L.c.*, book 1, section 22, number 1), the placing of the ring and the acceptance thereof operate as the expressed word of the other and as consent. Therefore, if the word of marriage precedes, the marriage is effected; but if the words of betrothal precede, the betrothal is effected, and the ring is received, because, being silent, she consents by the very fact, *dum arg. I. Paulus ff. rem. rat. hab., etc.*" With these considerations in mind, the conclusion is to be drawn regarding the first question: lighter proofs are sufficient when it is a matter of maintaining a marriage, than when the matter is of dissolving it, as Schmalzgrueber observes, *l.c.*, title 1, number 234, and in a doubt concerning consent, and consequently concerning marriage, it must be judged

Translated by churchlatin.ai, a product of Boyne Archives

in both forums in favor of the marriage, as Sánchez wrote, book 1, section 18, number 56.

[*Latin ed. p. 65*]

65. Concerning Marriages. Considering only the cause presented in this chapter, the Canonist believed that it was not possible to determine the nullity of the marriage, as the Sacred Congregation responded in the case of Theatina on November 22, 1865.

QUESTION SECOND. Regarding the question of whether the Parish Priest of St. Nicholas was the proper Canonist: in the case of either of the spouses, the Parish Priest, according to the text of the Council of Trent, session 24, chapter 1, concerning the Reform of Marriages, states: "Those who contract marriage otherwise than in the presence of a Parish Priest, or another Priest with the license of the Parish Priest or Ordinary, and with two or three witnesses, the Holy Synod declares to be entirely incapable of contracting marriage, and decrees that such contracts are void and null, as it makes them void and annuls them by the present Decree." It is observed that the Sacred Congregation has defined that the proper Parish Priest is that one in whose parish the domicile of the betrothed is located, Benedict XIV, *Inst. eccl.* 33, n. 9, and not the one in whose parish someone began life. Furthermore, it is more appropriate that only the Parish Priest be present, because when the Canons of origin wished to include the Parish Priest or even the Bishop of origin, they expressly stated that this was done as for the purpose of Holy Orders, as Sánchez declares, book 3, dispute 23, n. 7. However, according to canonical jurisprudence, with the distinction made between domicile and quasi-domicile, either may suffice to determine the proper Parish Priest with regard to the celebration of marriage. Furthermore, for someone to acquire a quasi-domicile, so that he is not considered merely a guest, but rather a resident and inhabitant, and therefore a member of the parish, it is necessary that he reside there for the greater part of the year, with the intention of later returning to his proper domicile, as happens with students, or those who rent their services, as Sánchez states, *loc. cit.*, n. 13; Leurenius, *loc. cit.*, I, 4, title 3, question 147, n. 1; but for others, the intention of remaining in a place is sufficient, with a residence of several months, especially if the house, dwelling, etc., has been furnished, as Schmalzgrueber states, book 2, title 2, n. 19, among others. Acts, volume VII, page LXXIV.

[*Latin ed. p. 66*]

Marriage 66: The intention to reside in a place is truly necessary only to the extent that it is required for acquiring a domicile or quasi-domicile; commonly, Doctors teach this. However, once a marriage is validly contracted in a place, even if the contracting parties have only just arrived there, Sánchez, *l.c.*, n. 14; Barbosa, *de off. Parochi*, p. 2, c. 24, n. 15. From these

Translated by churchlatin.ai, a product of Boyne Archives

discussions concerning domicile and quasi-domicile, it also follows that one can have two domiciles, and consequently, two parishes. See Sánchez, *l.c.*, disp. 24, n. 2. "Furthermore, it must be said that when someone has two parishes of residence, which happens when he lives equally in both, for example, in one during the winter and in the other during the summer, he can enter into marriage before the parish priest of either parish. This is proven because both are parishes of that person... therefore, there is no greater reason why only one parish priest can assist at the marriage." One might not understand this mathematically, but rather in a moral way, so that it serves as an example. What I have said requires that the residence be "entirely or almost entirely equal." After these remarks, the Canonist shows that such teachings concerning domicile or quasi-domicile do not contradict what Benedict XIV wrote in a letter to the Archbishop of Goan on March 19, 1758, concerning a period of one month. Some raise the question of whether a period of one month, as mentioned by Benedict XIV in that letter, is sufficient for someone to validly contract a marriage in a place where he has resided for that month, regardless of his intention. However, the Canonist, according to the accepted opinion, shows that the Pope did not intend to state: 1) that a period of one month is sufficient for someone who does not intend to acquire a domicile or quasi-domicile; nor 2) conversely, that someone who does have such an intention cannot validly contract a marriage before that month has passed; nor 3) that a period of one month is expressly sufficient for acquiring a domicile or quasi-domicile. Rather, the Pope gave an indication, or a sign, by which one could reasonably presume the intention of establishing oneself in that place, at least as a quasi-domicile. We omit this question, which has already been discussed in other cases, especially since it does not pertain to the present case. If you wish, consult the Gratianopolitan case, which I have reproduced in its entirety in Vol. II, p. 434, in which the Sacred Congregation, in giving a response that was to serve as a general rule, expressly mentioned the intention and the time.

[*Latin ed. p. 67*]

Marriage 67. Whether it pertains to establishing a domicile (either a primary or secondary domicile), two things are necessarily required: an actual dwelling place, and the intention of remaining there. Thus, even if someone perseveres in a place for many years, it is considered that they have a dwelling place, but not a domicile, unless the intention of remaining there is lacking, as Sánchez, Pirhing, Leurenius, and others state. Conversely, just as a domicile is established only by intention and action, so too it can only be transferred or lost by intention and action. Therefore, even if someone has the intention of changing their domicile, but has not yet abandoned their current dwelling, it cannot yet be said that the domicile has been lost, as Sánchez and others commonly hold. Furthermore, this

Translated by churchlatin.ai, a product of Boyne Archives

intention can be manifested both by words and by actions. While in matters that depend solely on a simple declaration, the declaration itself should be considered sufficient, provided there is no suspicion of deceit or fraud. Actions are manifested first, by a constant and prolonged residence, *in loco, ubi Senator es* (in the place where you are a senator); and thus, a residence of ten years is considered sufficient, or even less, at the discretion of the judge, as Menochius states, *de arbitrio*, question 84, number 17. Secondly, if, along with the residence, a greater part of one's possessions is transferred, especially with the family; as Barbosa states, *de off. Epis.*, page 2, paragraph 4, number 27, and others. However, this should not be invalidated, as Leurenius states, *contraria prae-loc. cit.*, I. I, question 368, number iv. With these principles established in law, the canonist proceeds to state that the marriage is valid if one of the following three conditions is true: 1) that the bridegroom, or either of the parties, at the time of the marriage, had a domicile or quasi-domicile in the parish of Saint Nicholas; or 2) that Frederick was, at that time, a vagrant; or 3) that the aforementioned parish priest had a delegation, either from the parish priest of the betrothed, or from the Ordinary, according to the cited Tridentine Decree. However, none of these three conditions is present in the case at hand.

[*Latin ed. p. 68*]

68. The marriages do not hold, first, because all the witnesses affirmed that she did not have any domicile, neither paternal nor maternal, nor fraternal, in Caietana, and that they all had passed away; and that she only went there occasionally for agricultural purposes, but not with the intention of staying there. This was repeated even more by Frederick, as the Canonist demonstrated with ample evidence. The second hypothesis does not hold, that Frederick was a vagrant, because for at least four years before the marriage, he resided in the city of Murten; he had agreed that Caietana should rent a house in his name; he resided there as if it were his own; he had placed his work in a printing shop there; and all the witnesses who testified at the time of the parish of Caietana confirmed that he had a domicile there, and that he lived with the printer in the city of Murten, in whose house he had lived for a long time. Nor does the third hypothesis hold, since there was never any mention made of a delegation, so that, unbeknownst to all, the marriage was celebrated fraudulently.

THIRD QUESTION. This third question has a certain novelty, and therefore I will gladly explain it. It was raised, as we have seen, by the defender of the marriage, appointed by the Ordinary, who affirmed that heretics are exempt from the decrees of the Council of Trent, and that this privilege of exemption should be communicated to the other party. Therefore, among other things, the Canonist, undoubtedly, stated that heretics are subject to the laws of the Church, which Pope Pius VII solemnly declared in the letter *Etsi fraternitatis*, dated October 8, 1803, in which he said: "But what

Translated by churchlatin.ai, a product of Boyne Archives

should be said of the opinion of those who believe that heretics are in no way subject to the laws of the Church, etc.?" Against this opinion, Scripture, the Councils, and Tradition, in short, all things testify. Let the Council of Trent be an example, which, in session 14, chapter 2, distinguishing between the unbaptized and the baptized, affirms that only the unbaptized are not subject to the judgment and therefore the laws of the Church, since the Church does not exercise judgment over anyone who has not first entered into it through the door of baptism. If the baptized are, therefore, the children of the Church (although rebellious and in schism), they are subject to the laws of that same Church. In Moguntia,

[*Latin ed. p. 69*]

Of Matrimony, 69. If it should ever be said that heretics are exempt from the law of Trent which invalidates clandestine marriages, it must be shown that this is not the case, because heretics are, as it were, under the jurisdiction of the Canonist, as if heresy conferred this exemption personally, and as if it were a privilege; but this must be demonstrated from elsewhere. Indeed, Benedict XIV, on the 4th of November, 1741, issued a celebrated declaration concerning marriages in Holland and Belgium, in which, "having carefully considered all the circumstances," he "declared and decreed that marriages contracted between heretics in the aforementioned United Provinces of Belgium, and those which shall be contracted in the future, even if the form prescribed by Trent is not observed in their celebration, shall be considered valid, provided that no other canonical impediment exists." With this celebrated document, the Canonist indicates the reasons which Benedict XIV expounds in his work on the Diocesan Synod, I, 6, chapter 6; these reasons, indeed, were scarcely indicated in this work, but were those which were presented to the consultors and judges in the Holy Congregation of the Council when dealing with this most serious matter. Judgments were made regarding the validity of marriages contracted in those provinces without the presence of a priest, and these reasons can be read in the aforementioned work; however, it should be noted that they were explained much more fully in the folios of the Holy Congregation of the Council after the most serious opinion of Cardinal de Alsatia, Archbishop of Mechlin, which is referred to in the work "Canons and Decrees of the Council of Trent with Declarations, etc.," edited by Neapolitan Joseph Pelella in 1859, pages 305 and following. It is sufficient to read the opinion of the aforementioned Cardinal de Alsatia so that everyone may see how wisely that decree concerning the validity of marriages was issued, and how weighty were the reasons which suggested that the decree of Trent had never been sufficiently promulgated in the United Provinces of Holland: and if, perhaps, it had been duly promulgated in some parish, it had quickly fallen into disuse. Such reasons are scarcely indicated in the work on the diocesan synod, and indeed not at all; on the contrary, one

Translated by churchlatin.ai, a product of Boyne Archives

reason is given which was neither the first in the exposition of the case, nor sufficiently weighty, and which, if not properly understood, could lead to a legal error, such as the reason of the "society of heretics"; as if heretics, insofar as they constitute a sect, were exempt from the decree of Trent by their very nature, even if the decree had been publicly promulgated and duly observed in the place where the sect resides; which would be false.

[*Latin ed. p. 70*]

The same Holy Congregation discussed in question 70 whether marriages contracted between Catholics and heretics should be considered equally valid. This second question was considered as a consequence of the first defined question: for if marriages, whether of heretics or of Catholics, contracted without the presence of their own parish priest, were valid in those regions, it followed that mixed marriages should also be valid. The words indicate in the work on the Diocesan Synod: "Because one of the spouses, whether because of the place in which he lives, or because of the society in which he lives, is exempt from the law of the Tridentine Synod, the exemption, of which he enjoys, remains common to the other party, because of the nature of the contract, by virtue of which the exemption, which belongs to one of the parties, extends to the other, according to civil laws, and is communicated to him." However, the Canonist observed that the reasons for the Benedictine declaration, which are indicated in the work on the Diocesan Synod, are reduced to local reasons; then to the lack of publication of the Tridentine Decree (because of the place in which they live); because of that society, for which heretical people did not then consider the Decree to be published in those provinces, or for any other reason the Decree was not in force (because of the society in which they live). Therefore, the reasons arise from local circumstances, and no one has ever asserted that such an exemption belongs to heretics, as if it were a personal privilege that each one carries with them wherever they migrate and wherever they reside, even if the Decree is properly published and fully in force there, as in Italy. And because of the same local circumstances, Pius VII, in letters dated October 8, 1803, addressed to the Archbishop of Moguntinum, decreed: "Marriages of heretics contracted before a non-Catholic minister are generally null, and therefore the second marriages [of such persons] will be valid, if they are contracted before a Catholic priest." However, this is not always true, nor is it sufficiently safe, and therefore, it should not be indiscriminately applied in any case. "Indeed, your fraternity knows that marriages of this kind..."

[*Latin ed. p. 71*]

Of Marriages 71: "It is established and confirmed that in those places where the Decrees of the Council of Trent – which was never publicly promulgated – or which were not observed as the Decree of that same Council,

Translated by churchlatin.ai, a product of Boyne Archives

or the Tridentine Decree, or if they were once observed, have, over a long period of time, fallen into disuse. Hence, the opinion, which maintains that marriages contracted among heretics before a non-Catholic minister are generally null and void, has always had opponents, and more numerous and more distinguished ones, so that it scarcely retains any degree of probability, especially after the most celebrated declaration issued by Benedict XIV in the year 1741 concerning marriages in the Netherlands." Thus, those were mistaken who universally judged that no marriages of heretics are validly contracted before a Catholic priest; and likewise, those were mistaken who universally affirmed that such marriages are valid: if, therefore, it cannot be affirmed in a general way, the cause of the distinction must be sought in the circumstances of the places; and indeed, from the circumstances of the places, Pius VII repeated the distinction; for he indicated the reasons why the unions of heretics may be valid, either because the decree was not promulgated in their places, or because it was not observed as the Decree of the Council of Trent, or because, in those same places, for whatever reason, it has fallen into disuse. Therefore, heretics are not exempt from that Decree because they are heretics; for if that were true, heretics would always validly contract marriage, wherever they might be, without the presence of a Catholic priest and witnesses. And from the circumstances of the places, the Holy See constantly repeated the reason for the distinction, why in one region heretics may validly contract marriage without a priest, while in another they do not validly contract; for the Decree *Benedictus* declared that marriages are valid in the federated regions, but also established, as did the aforementioned Benedict XIV, that they are valid even in those places, so that it was not only an authentic declaration for reasons, which, according to the Holy See's canons, would also legally require it, but it established, for those provinces, to remove any doubt, if perhaps in any parish of those regions the reason for the declaration did not hold.

[*Latin ed. p. 72*]

Marriage 72. And just as the particular declaration and constitution has always been considered by the Holy See to be that Decree, so that, as far as possible, it has been extended to other regions, whenever similar causes are present, which would warrant that most wise Decree. However, having stated these things, what then are the exceptions of heretics from the Tridentine Decree, which have been brought up in opposition? They return to mere cavils, requested from some less accurately explained, or not properly understood, reason, presented by some disputants in that most serious cause, which concerned the federated provinces of Belgii. Since these things are so, in our case it is clear that the Tridentine Decree was promulgated and rightly and constantly observed in Italia; therefore, whoever heretics may come to contract marriage in Italia, if they do not ob-

Translated by churchlatin.ai, a product of Boyne Archives

serve it, they do nothing. After these things, we omit the Defender of the marriage from referring: these observations of ours return to those which are commonly presented in similar cases, when the matter of domicile and quasi-domicile is discussed, as can be seen specifically in the case presented in volume I, page 12g, and in volume IV, page 241: these objections are easily refuted in the present matter. Doubt: "Whether the judgment of the Archdiocesan Court should be confirmed or rejected in this case." RESOLUTION. The Most Holy Congregation of Councils, having knowledge of the case on January 27, 1872, judged that: The judgment should be confirmed, with the words "provided that all other legally required conditions are observed, the marriage is considered to be validly contracted, of which the essence is the free consent of the parties."

[*Latin ed. p. 73*]

II. Such consent must be mutual between the betrothed man and woman, and expressed either by words or by equivalent signs, which express and constitute the contract.

III. Therefore, if the betrothed man affirms his intention to enter into marriage, and the woman remains silent and gives no sign of mutual affirmation, but rather acts passively, the marriage is not considered to be contracted, for there is lacking mutual and expressed consent.

IV. However, if circumstances are present which may indicate that the silent woman has consented to the marriage, it will not be easy, whether in internal conscience or, especially, in the external forum, to judge the marriage as null.

V. Such circumstances would be those in which no force or fear was involved, no coercion; rather, a free and willing intention to enter into marriage preceded, and in the very act of the celebration, the woman, remaining silent, readily accepted the wedding ring offered by the man.

VI. In such circumstances, unless it can be proven that these actions were undertaken with the intention of jesting, the validity of the marriage must be upheld.

VII. In this case, if the marriage were to be judged solely on the basis of this point, one might opine that the consent was invalid. For it seems to me that it is sufficiently established that the woman, otherwise experienced, considered the celebration of this marriage as a joke, persuaded that it was not properly conducted; therefore, she reformed her actual consent and acted passively. She left it to others to perform the other actions, whatever their value may be, but she herself did not actively participate in the essential part. And she seems to have considered the acceptance of the ring not as her own action, but as the action of the man; for it must be considered that she considered the acceptance of the ring in conjunction with the other actions, such as going to the church, kneeling before the altar, etc., all of

Translated by churchlatin.ai, a product of Boyne Archives

which were informed by the conviction that this marriage was not right and was a trick, and therefore a joke, which truly moved her to laughter.

VIII. This is all the more so because it does not appear from the actions that Caietana placed any particular value on the act of receiving the ring from the man; on the contrary, it appears that she abstained from expressing her consent, the value of which she knew very well. Since she acted in this passive manner, it cannot be affirmed that a contract of such importance was entered into, one that would establish a most serious and indissoluble bond.

IX. Furthermore, if this were the only basis for judging the case, the fact should have been more strongly confirmed by the testimony of seven witnesses, which was almost entirely omitted in the course of the proceedings.

[*Latin ed. p. 74*]

74. Concerning Marriages, VII. Furthermore, understand that betrothed couples, in places where the Decree of Trent has been promulgated, even though they may reside in their own parish and go to another parish for the purpose of contracting marriage, without establishing any domicile or quasi-domicile in that parish, must proceed according to the laws of that place. VIII. It is of no consequence whether either of the betrothed has received the sacraments of Holy Baptism and Confirmation in that parish and has frequented it: for if he has no domicile there, it is not his proper parish, and therefore the pastor there cannot be considered his proper pastor for the purpose of contracting marriage. 1 I X. Finally, understand that heretics who reside in places where the Decree of Trent has been promulgated must contract marriage according to the laws of Trent, before the proper pastor of either of the betrothed, if they wish to contract it validly. X. It is futile to oppose the reason of society to which the heretics belong: for the heretical sect can only operate in places where it dominates, to prevent the Decree of Trent from being promulgated, or, if it has been promulgated in those places, to cause it to fall into desuetude over time, in the same way that individual ecclesiastical laws can eventually fall into desuetude. XI. Therefore, heretics are not exempt from this law of the Church, but either the law of Trent does not apply to their places, or their own law has canonically superseded it. 1. Inobservantia localem tandem. 2. Cf. other cases of this type, indicated in the index of the other volumes under the words Domicilium or Matrimonium. Compare the somewhat more difficult case of a mixed marriage, which I have explained in vol. II, page 613. In the question of marriages of heretics, or mixed marriages, not contracted before a Catholic pastor in places where the Decree of Trent has been promulgated, or is in force in some way as the Decree of the Council of Trent, there are authorities who hold divergent opinions, two of which are extreme: one teaches that such marriages are valid; the other truly teaches that they are null. Both opinions are supported by resolutions, decrees, or teachings

Translated by churchlatin.ai, a product of Boyne Archives

of the Holy See. In such a question, two things, which must be clearly distinguished, are easily confused: namely, the principle of law is confused with its application.

[*Latin ed. p. 75*]

XII. In the matter of Marriage, there was, at least in one instance, no marriage, since one of the parties lacked a domicile or quasi-domicile, and this was celebrated through the senile weakness of the parish priest, in violation of many ecclesiastical laws. 1. Regarding the application of this principle to specific cases, it must be understood that the applied principle is always considered as an absolute principle. Therefore, it is not surprising that both opinions can find a basis in the Decrees of the Holy See. The principle of law in this matter is very simple, and can be stated as follows: The Decree *Tametsi* obligates heretics where it has been published or is in force, just as the Decree of the Council of Trent. Only he who either denies that ecclesiastical law cannot obligate heretics, or who claims that the Church did not intend to obligate heretics with this Decree, can deny this principle; both of these are manifestly false, both according to the doctrine of the Holy Catholic Church and according to the constant practice of the Apostolic See. However, in the application of this principle to specific facts and circumstances, serious difficulties often arise. For, when a principle of law is to be applied to specific cases, it must always be determined how much force the principle has and how far it extends; this force is determined by the wording of the law itself, by the intention of the legislator, and by other circumstances; furthermore, once the force of the principle is known, other principles of law often come into play in the application, which in some way conflict with it, so that sometimes one prevails, and sometimes the other, which is the essence of jurisprudence. Therefore, responses and decrees must necessarily differ and be contrary for various circumstances, lest the principle suffer harm. Hence, the opinion that is in question, which teaches that the marriages of heretics are valid, when considered in the abstract, is false, but when considered in the concrete, according to the circumstances of the place and the facts, it is often found to be true; on the other hand, the opinion that teaches that the marriages of heretics are null, when considered in the abstract, is true, but when considered in the concrete, it is often found to be false. Therefore, it is not surprising that both opinions can validly agree with the resolutions and decrees of the Holy See, with respect to the aspect under which they are true. This receives confirmation from the declarations of Pius VII in the Brief addressed to the Archbishop of Mainz, dated October 8, 1803, as mentioned above by the Canonist. The parish priest neglected to obtain the document regarding the freedom of status, which both the ecclesiastical court of Gaeta and Frederick should have obtained. See the Instruction of Clement X, which you have in Vol. VI, p. 442. The permission to be obtained from the court to

Translated by churchlatin.ai, a product of Boyne Archives

assist in a mixed marriage was neglected, according to the Instruction of the Secretariat of State, which is presented in Vol. VI, p. 456. He imprudently, and without further inquiry, rebaptized the heretic Frederick, although under the condition that he should first inquire whether he had been properly baptized in his own sect, and that he should be instructed, and that he should be required to make an abjuration of errors and a confession of sins. See the Decree of the Holy Office, which you have in Vol. IV, p. 320. He neglected to inquire whether the bride possessed a sufficient domicile in that parish to validly contract marriage, or at least to request a delegation from her own parish priest, or from the Ordinary. He omitted the third publication at his own discretion, etc., in the very same instance.

[*Latin ed. p. 76*]

Concerning the eleemosynary offering of the second Mass, CIRCAELEEMOSYNAMSECUNDAE MISSAE. On April 29, 1871. Summary of prayers. The Bishop N., in his letter delivered through the Reverend Secretary to the Most Holy Congregation of the Council, explained the following, which occur "in my diocese and the adjacent one (the adjacent diocese being under the jurisdiction of the Holy Congregation of Propaganda Fide): < There exists a certain pious association of priests and laymen, which is called the Marianum. The members of this association are obligated, for the repose of the soul of any deceased member, immediately after the death of the same, to celebrate one Mass or to ensure that one Mass be celebrated. < Many of the parish priests of my diocese are members of this association, among whom are not a few who, due to moral necessity, according to the authority [of the law], celebrate two Masses on Sundays and feast days. < However, these same priests are obligated by duty to celebrate many Masses throughout the year, no less than those expected for the offered stipend, and there are few days on which they can fulfill the aforementioned obligation, which the Marianum imposes, by offering Masses for the deceased members of the association. Moreover, because of the meager revenues of their benefices, it is difficult for them to provide the offered stipend, so that, for priests, the very act of celebrating marriages does not even involve taking care to at least hear the woman's consent. Finally, in the marriage records, he neglected the form prescribed in the Rituale, using another, which was neither sufficiently accurate nor entirely true, and he even used the hand of Friderici in the writing, so that such writing did not inspire confidence. It seems incredible that such a parish priest should exist, even with the silence of the Curia, as happened in another case, which you have in Vol. 1, page 129, in which, however, the parish priest was duly penalized. Concerning the unsuitable parish priest, the Council of Trent decreed in chapter 6, session 21, De Ref. See the Instruction of the Holy Congregation of Propaganda Fide, which I have explained in Vol. VI, page 546, in which Instruction you will find more

Translated by churchlatin.ai, a product of Boyne Archives

about the faculty of dispensing from Mass. 1

[*Latin ed. p. 77*]

Concerning the alms offering for the second Mass, 77: "The prescribed Masses ought to be celebrated; therefore, it is greatly desired that it be permitted to them, on Sundays and feast days, in which they are obligated to offer one Mass for the people, or those who are not priests, to fulfill their special obligation by offering another Mass for a particular deceased person, to whom they are bound by a pact. Since this seems to be permissible only by an Apostolic Indult, the undersigned Bishop, for the benefit of the priests belonging to my diocese, who are bound by such a pact or will be in the future, humbly requests Your Holiness, to whom this matter pertains, to graciously grant this Indult. I am all the more confident that this grace will be most kindly conferred upon me, since the neighboring diocese also enjoys a similar concession."

OBSERVATIONS FROM OFFICE: Before considering certain matters for and against, it was inquired in Rome about the faculty that the Bishop of the neighboring diocese had granted. However, nothing was found other than circular letters from the Sacred Congregation of Propaganda Fide, dated October 15, 1863, addressed to the Ordinaries of the missions, in which it is declared that, according to the ordinary rule, it is not permissible to receive alms offerings for a second Mass (which, with due observance, is often permitted); and that the faculty to receive alms offerings for such a second Mass should not be granted except in extraordinary circumstances and with a grave reason. With this information in mind, it is inquired whether the case, concerning the receiving of alms offerings for a second Mass, falls under prohibition; and, to the extent that it is affirmative, whether the grace should be granted. In addition, the Constitution of Benedict XIV, *Cum Semper oblatas*, and the Encyclical Letters of the Most Holy Father, beginning with *Amantissimi*, concerning the obligation of pastors and all those who canonically administer a parish, whether permanently or temporarily, to offer a Mass for the people each day of the feast; nor the other Constitution of Benedict XIV, *Declarasti Nobis*, and the opinion of Cardinal Zelada in the case of...

[*Latin ed. p. 78*]

Concerning approximately 78,000 Masses offered for the poor, and the alms collected for them on August 20, 1768, the following resolutions of the Sacred Congregation of the Council, concerning Masses offered for the people, and the collection of alms for the second Mass, were presented. It was declared that the second Mass should not, expressly, be offered for the people, and it is expedient to refer here to the resolutions, although they are explained with some detail in Volume I, pages 10 and following. The following questions were raised:

Translated by churchlatin.ai, a product of Boyne Archives

"I. Is a parish priest, who governs two parishes and therefore celebrates Mass twice a day, obligated to offer both Masses for the people of each parish, notwithstanding the smallness of the income in the case?

II. Is a parish priest, who celebrates Mass twice on the same day in the same parish, obligated to offer both Masses for the people assigned to him, free of charge, in the case?

III. Are vicars or other priests who do not have the care of souls, if they celebrate Mass twice a day, as sometimes happens, either because a sufficient number of Masses are celebrated in the parish church, or because hospitals, prisons, or gatherings of religious people lack Masses, obligated to offer the second Mass also for the people, free of charge, in the case?"

The Sacred Congregation responded:

"To I: Affirmative.

To II: Negative, with a firm prohibition against receiving alms for the second Mass.

To III: Negative, insofar as they do not have the care of souls, with a firm prohibition against receiving alms for the second Mass."

Such declarations were confirmed in another case in Salamanca, on February 22, 1861, in which the following question was raised: "Must the parish priest necessarily offer the second Mass for the people, just as he offers the first, or is he free to retain the application of that Mass for himself, with a stipend, in the case?"

Regarding these points of law, you will find more information in other cases presented individually concerning these matters; compare Volume I, pages 7, 50, and 389.

[*Latin ed. p. 79*]

Concerning alms offered for a second Mass, the Holy Congregation responded: Resolutions were given in the Chamber, on September 25, 1858, cited in vol. I, page y. As you have explained the reason, it is understood that it is permissible for priests to offer a second Mass according to their own intention, provided they do not receive a stipend; and that, according to the laws of the Pious Union, a second Mass can be offered by priests in the name of the deceased, provided they do not receive a stipend for it. However, it can also be observed that, although these parish priests or presbyters freely offered the name of that pious society at the beginning, once they are enrolled, they are no longer free to offer such a Mass. Therefore, although the alms offered for the second Mass represent a temporal benefit, since they do not materially and directly receive anything from it, they are free to apply it to another purpose, provided they do not receive any benefit from it, if they were to offer the Mass for the deceased according to the laws of the Pious Union. To resolve this controversy, it was necessary to inquire about the purpose of the law that imposed the prohibition, so

Translated by churchlatin.ai, a product of Boyne Archives

that the extent of the prohibition could be determined. Furthermore, such a purpose or reason for the law was said to be to prevent the opening of a place for shameful profit and greed, and to avoid scandal to the people. It is understood that, in the early centuries of the Church, it was not forbidden for a priest to celebrate more than one or two Masses on the same day, but even more. Such permission was restricted in order to remove the danger of sordid gain and greed; hence, from canon 1 of the De Consecr., dist. 7, Pope Alexander II, in the eleventh century, is said to have responded: "It is sufficient for a priest to celebrate one Mass in one day, because Christ suffered once and redeemed the whole world. It is not a small thing to offer one Mass, and it is very fortunate for him who can celebrate one Mass worthily. However, some offer one Mass for the deceased."

[*Latin ed. p. 80*]

Concerning the eighty masses for alms of the second Mass: Those who, for money "or flattery (otherwise, offerings) of the secular world, presume to offer more masses in a single day, I do not deem it a "damnation." And another mass, if necessary. From this, the interpreters of the sacred canons and Benedict XIV in the Constitution *Declarasti nobis*, § excepta, and Cardinal Zelada / c. § 6, 7, 8, infer a true reason why the repetition of masses is forbidden to priests, namely, to avert the danger of sordid gain and acquisition. Therefore, since this is the reason for the prohibition of the repetition of masses according to the sacred canons, it was further inferred that this reason also applied to when the celebration of a second mass is permitted, namely, that the acceptance of alms should be strictly prohibited. However, no mention of this reason for the prohibition is found in the relations or briefs, as they are called, of causes that were recently discussed concerning the repetition of masses; Benedict XIV in the Constitution *Declarasti*, concerning the reception of alms, did not seem to have indicated or remembered anything of this kind. However, he spoke of this in the Constitution that begins *Quod expensis*, dated August 2, 1748, in which he granted to the priests of Spain and Portugal the permission to celebrate three masses on All Souls' Day. Indeed, in that Constitution, "the Pontiff remembers that he has always applied himself with the utmost diligence to ensure that all species of avarice and every pretext for obtaining sordid gain be removed from the celebration of the Mass." Furthermore, "he clearly states that, while granting the aforementioned priests the permission to celebrate a second and third mass on All Souls' Day, he did not add any other reason for prohibiting the acceptance of stipends."

However, this should not be surprising, since the reasons contained in the briefs presented to the Holy Congregation are not always those for which the Holy Congregation judges in this way; for the causes are discussed by the Holy Congregation, and it often happens that a Resolution is issued that is based on other reasons and motives that were not consid-

Translated by churchlatin.ai, a product of Boyne Archives

ered in the aforementioned briefs. The Holy Congregation does not usually reveal its reasons for deciding. Cf. what I wrote in vol. I, page 192.

[*Latin ed. p. 81*]

Concerning alms, unless it were tolerated, during the time of the second Mass, the opportunity for avarice and sordid dealings, or at least for scandalous remarks, would be present. Several bishops, on a single day, restricted the number of Masses, as it was said in this Constitution that the Holy Congregation had perhaps altered the rule concerning the stipend for the second Mass by forbidding it. However, after considering the reason for this prohibition, it was again considered what arguments were in favor of a positive decision, and what arguments were in favor of a negative decision, in our question. In favor of a positive decision, it was seen that the danger of such sordid dealings and popular scandal would be far removed in this case; then, that it concerned a matter that rarely occurred, namely, whenever some priest, bound by the Marian Vow, passed away from this life; then, that it concerned a purely internal act, which, without any payment, would avoid the attention of the people or would not cause any offense. Therefore, since the reason for the law seemed to be lacking, and the law itself would not be applicable; all the more so, because prohibition, by its very nature, is subject to strict law and strict interpretation. On the other hand, it was noted that the mind of the Holy Congregation, which perhaps placed great importance and diligence in imposing this prohibition, might be inclined to the opposite. Indeed, when applying a law, it is necessary to pay attention to the principal intention of the legislator; Reiffenstuel, *Opera Moralia*, tract. ij, de cens., tit. 2, qu. 4, n. 67: but rather, the principal intention is to be considered to be that of the Holy Congregation, namely, for the strengthening of the Church, rather than for the benefit of the priests. In truth, this rigor has been seen in practice by the Holy See, as is exposed in the case of Treves, *Eleemosinae Missae*, 23, where, on the feast of March, with great inconvenience, and 1. This reason you have in Vol. I, p. 13. *Acta*, vol. VII, page LXXIV. 1861, because in this case, concerning the second Mass, the custom was such that...

[*Latin ed. p. 82*]

Concerning the alms, the second alms for this second Mass was received from certain benefits; however, the Holy Congregation decreed that only a prudent bishop could permit some remuneration, considering the labor and inconvenience, excluding any alms for the application of the Mass. Also, in the cause of Almerien, concerning the alms of Masses of March 2, 1861, in which cause there was discussion about the interpretation of the Constitution of Benedict XIV, as cited above, *Quod expensis*. In this Constitution, therefore, the Pontiff did not wish to introduce any innovation concerning the application of two or, respectively, three Masses, which

Translated by churchlatin.ai, a product of Boyne Archives

priests celebrated in the Kingdom of Aragon before the Indult, although he ordered and commanded that, for those who would henceforth, by the force of the aforementioned Constitution or Indult, celebrate a third Mass in the same Kingdom of Aragon, or a second and third in other regions to which the Indult extended, the fruit thereof be applied, not to any particular deceased person, but entirely to the benefit of the faithful deceased, for the suffrage of all. Concerning the alms, however, for such Masses, Benedict XIV decreed in § *Scimus*: "Of those who, up to this time, in the Kingdom of Aragon, received two or three alms, we do not deem it necessary to introduce any innovation. But to those who, henceforth, in the same Kingdom, by the force of the present Indult, will celebrate a third Mass, for just reasons and under the penalties mentioned below, we strictly forbid them to presume to receive any alms for that Mass, just as we command and order those who, in other places, included in this same Indult, will celebrate a second or third Mass, in a similar manner and under the same penalties, that they not receive more than one alms, namely, for and in that amount only, which has been regularly prescribed by the synodal constitutions or by local custom. We decree that there is no reason whatsoever, nor any pretext or opportunity to refuse to observe our precept, so that this may not, by any means, be a voluntary..."

[*Latin ed. p. 83*]

Concerning the alms offering for the second Mass, section 83: "Indeed, the offering of the faithful is voluntary, for we have decreed that nothing should be received from those who do not offer it freely," etc. From this passage, a question arose, in that very quantity, etc., stemming from the incidental proposition (which is the only incidental proposition in the entire Constitution), whether the words that follow, namely, "nor should a voluntary offering of the faithful," etc., should also be referred to that incidental proposition. Although many and weighty reasons, both internal and external, existed to deny this, yet, with the question still in doubt: "Is it prohibited for Priests included in the Indult under consideration to receive, for the Mass of the day commemorating all the faithful departed, an alms offering greater than that which has been regularly prescribed by the synodal tax or by local custom, even if offered spontaneously in this case?" The Holy Congregation responded firmly: "Affirmatively." Following this, the matter came to another question, namely, whether the proposed case would be subject to the law regarding the non-reception of alms for the second Mass, or whether, by grace, the second Mass might be permitted, so that the Priests could apply the Mass according to the laws of the Marian Pact. And, considering the affirmative response, the weight of the Benefices was considered, as well as the multitude of Mass obligations, so that few days would be left to those same Priests. And such graces are usually granted by the Holy See through the Sacred Congregation for

Translated by churchlatin.ai, a product of Boyne Archives

the Propagation of the Faith. On the other hand, considering the negative response, it was considered that, by grace, it would certainly provide little relief to those Priests, since for one or the other, perhaps every year, a Mass would have to be celebrated. Therefore, it did not seem appropriate for such a small matter to derogate from such firm rules. The grace mentioned above, for our cause, would be detrimental to the cause of the Treasury. Although the faculty denied in the aforementioned example, and in the Ordinaries of Missions, cannot be usefully adduced, since it is not customary to grant graces to Missionaries except under special circumstances, which are entirely denied to other Catholic bishops, not in a similar condition.

[*Latin ed. p. 84*]

Concerning 84 alms given for a second Mass, and with the observations presented before the Holy Congregation according to its office, on April 29, 1871, regarding the matter of a particular case, in which application was made to the Most Holy [Father] for a dispensation for ten years, after a discussion, a decree was issued: From which [points] one gathers: I. The principal reason why the repetition of Masses is prohibited in the present order of discipline, whenever canonical causes are lacking, is the danger of base gain and acquisition. II. The same reason has, in our time, provoked the interpretations of the Resolutions of the Holy Congregation and of the Council of Trent, which expressly and distinctly declare and prohibit the reception of alms for a second Mass whenever it is repeated for canonical causes. III. Such an express prohibition has long since been in some way foreshadowed by Benedict XIV in *Quod expensis*, published for the Kingdom of Spain and Portugal. IV. Although this express and particular prohibition is recent, the foundation of the prohibition is very ancient; indeed, this foundation is sufficient to obligate all private individuals to declare to the Holy Congregation the particular obligation not to receive alms for a second Mass; sufficient, that is, for the Council of Trent to authentically interpret the law of Trent, so that it would declare and decree this obligation in its Resolutions. 1 2 See the Instruction of the Holy Congregation of the Propagation of the Faith in Volume VI, page 545, and what I have noted there. The foundation of these Resolutions is as old as the Catholic Church itself; for Alexander II stated in the cited canon, *Sufficit, de consecr.,* dist. 1: "He who presumes to offer more Masses in one day through money or flattery, I do not judge to be deserving of damnation; but this was not the first time that it was true." For the repetition of Masses, if it is done directly for the sole purpose of gaining profit, is considered so sacrilegious that it even excites horror in the Christian people, as experience demonstrates; for only the sacrifice and the tremendous mystery, as the Council of Trent said, are held to be a material means, placed within one's own power, for gaining profit; from which the Church has certainly never abstained. The Church, however, does not only act when it is a question of a repeated Mass (in

Translated by churchlatin.ai, a product of Boyne Archives

which a

[*Latin ed. p. 85*]

Regarding the alms of the second Mass, 85. The Declaration issued and decreed that an authentic promulgation is not necessary, as if it were a new law, since it should not be considered a new law, but rather an authentic interpretation, although it extends the law in some respect. 1. Furthermore, you gather that the mind of the Holy Congregation is that such Resolutions should be strictly observed, so that it does not consider exempt those who, while not receiving the alms for the second Mass, nevertheless apply it as a rule for some obligation undertaken by convention. 1. It can be considered a shameful profit if everyone could repeat it at will and receive alms), but even when it concerns a single celebration, it has always been vigilant to remove all avarice, although it has decreed that a stipend should be given to the celebrant. Therefore, the Council of Trent, in its Decree on matters to be observed and avoided in the celebration of Mass, after giving an injunction to Bishops and Ordinaries of places to prohibit and remove all things that lead to avarice, idolatry, added: And so that many things may be understood in few words, in the first place, with regard to avarice, any kind of reward, conditions, agreements, and whatever is given for celebrating new Masses, as well as importunate and ungenerous demands for alms, rather than requests, and other similar things, which are not far from the Simonian stain or certainly from shameful gain, should be completely prohibited. In general, the meaning of this Decree is such that it implicitly contains the prohibition of repeating Mass for the purpose of obtaining profit. Therefore, in order to completely remove the danger of such shameful gain, the Holy Congregation seems to have resolved that, in the repetition of Masses, which may occur for canonical reasons, the alms for the repeated Mass should always be understood to be prohibited, and this should be strictly observed. Therefore, the Resolutions of which we are speaking should be considered as authentic interpretations of this Decree of Trent. Since we are dealing with an authentic interpretation of the law, which proceeds from the highest authority (for there is no application of the law to particular acts because of circumstances of time or place; nor is there a concession of some grace, which does not always imply a certain contrary law, to which grace derogates), it has the same force as the law that is interpreted and is, in a certain way, confounded with it. Such interpretations of the law are rarer in this later age, but were frequent after the celebration of the Council of Trent, which were disseminated by jurists of that time and by authors of moral theology, who considered it necessary to have a new promulgation in order to have the force of law; but in our age, it is much easier to disseminate them immediately through scientific periodicals. Compare also, if you wish, what I have written in the Preface to the commentaries on the Apostolic Constitution of the Holy See, in which

Translated by churchlatin.ai, a product of Boyne Archives

the limits of the sentences of censure are set. From such Resolutions, by which the Holy See strictly prohibits the reception of alms for the second Mass, something seems to follow, 1.

[*Latin ed. p. 86*]

Irregularitatis 86. IRREGULARITATIS. Die 27 Ianuarii 1872. Summaria precum. Iosephus, diligentemente occupatus in facultate theologica, vehementer desiderabat initiari in sacris ordinibus: sed cum visiva virtus oculo sinistro ei deficeret, ideoque se non posse promoveri existimaret absque dispensatione Apostolica, supplices preces SSmo Patri admovit pro dispensatione. Episcopus eum maxime commendavit. Medicus testatus est, eiusdem sinistrum oculum laborare morbo organico locali, quo Iosephus posset in quavis alia operatione: nec legere, nec eo uti, quamquam autem visiva facultas huius sinistri oculi fere deficeret, sustentari eamdem a perfecto oculo dextero: nec oculus, esse periculum, ut sive sinister sive dexter, ob influxum illius, aliquod detrimentum lapsu temporis essent denuo passuri: testatus praeterea est, laesum oculum nihil deformitatis praeseferre.

ANIMADVERSIONES E X OFFICIO. Animadversum est, irregulärem eum esse, cui oculus sit erutus, si absque notabili defor- can. ij, dist. 55, illi, cui erutus est oculus, non possunt, secundum canones, Sacerdotii iura concedi. His autem iuxta Glossam in mitate Missae canonem legere nequeat ex ubi legitur: quod in praxi utile erit Sacrorum Antistitibus. In statu, quo Catholica Ecclesia aetate nostra versatur, ob Presbyterorum deficientiam non difficile contingit ut christiani populi Missa careant. Quum autem ratio (saltem praecipua) cur prohibita censeatur Missae iteratio, sit periculum turpis lucri: quum praesenti aetate sit omnino prohibita receptio eleemosynae pro Missis iteratis, minori animi scrupulo concedere poterunt veniam iterandi Missam in populi commodum; periculum enim iterandi Missam ob turpe lucrum cessat, quando pro iterata Missa prohibita districte maneat eleemosynae receptio.

[*Latin ed. p. 87*]

Irregularitatis, chapter 87, section 2, concerning words. It seems that those who are lacking in virtue are to be considered equal, according to the Glossa: "The sacred canons state that, when teaching, one must look directly into the eyes. For it is said that he who lacks the left eye should be removed from the Mass; and, just as they seem to think this concerning him who has the left eye, but does not have the faculty of sight in it, so too..." But, conversely, it is not irregular for teachers to not prefer that deformity which might cause scandal in the celebration, and which might impede the exercise of the celebration. For in the case of an irregularity arising from a bodily defect, the deformity is the reason for the irregularity; and if that deformity ceases, then the irregularity itself seems to cease, as Navarrus states, chapter 2, paragraphs gg; Laymann states, volume 1, chapter 5, paragraph

Translated by churchlatin.ai, a product of Boyne Archives

y, in *Theologia Moralis*, summary, number 2, where he says: "The loss of one eye, even the left eye, without a notable deformity, does not make one irregular." However, Pirhing states in book 1, decrees, title 20, number 6: "But if someone has both eyes whole, although he is deprived of the power of sight in the right eye, without any notable external deformity, he is not irregular; on the other hand, if he is deprived of sight in the left eye, which is the eye considered by the canons, then he is irregular, even if there is no notable deformity in that eye itself; unless the right eye possesses such a power of sight that, without any unbecoming turning of the face, it can read the Canon of the Mass, to which the arrangement of books can also contribute, Navarrus, book 1, counsel 6 and 7, number 1 gg, ibid., question 1, corollary 1, cited in Avila, concerning censures, discussion 3, question 1, corollary 1; Suarez, disputation 31, concerning censures, section 2, number 13." Reiffenstuel, however, states in book 5, title 37, section 4, number 83, that the opinion of the Doctors is that those who lack the sight of the left eye are irregular. Furthermore, certain observations concerning the causes for granting or denying a dispensation have been made, and such prayers were presented before the Holy Congregation on January 27, 1872, from which a Rescript was issued: "According to the judgment and conscience of the Bishop, and with the words..."

[*Latin ed. p. 88*]

88. OF IRREGULARITIES, FROM WHICH YOU MAY GATHER: I. Whether he who does not see with his left eye, nor exhibits any deformity, whether in himself or when reading the Canon, is irregular. II. That a requested grace, even though it concerns promotion, can easily be obtained through the Holy Congregation. III. That the Holy Congregation has not used words of dispensation and habilitation, which would indicate that Joseph is irregular.

1. DISPENSATION FROM IRREGULARITY. January 27, 1872. Summary of petitions. John, a priest and parish priest, was afflicted with apoplectic illness. With the passage of time, his speech and the strength of other members of his body recovered; however, his right arm and hand remained so impaired that he was quite unable to perform the rites of the Mass and the ceremonies. Therefore, he requested that he be permitted to perform the sacred actions with his left hand, which was not impaired, whereas his right hand was. The Archbishop, having highly commended this parish priest, wrote to the Holy Congregation. The Holy Congregation replied to the Archbishop, asking whether "it has been observed before," and to transmit a written account of "the performance of his ceremonies as an experiment," and "whether any danger of irreverence or popular admiration can be feared."

1. Cf. a similar response given in a similar question on page 46, and what

Translated by churchlatin.ai, a product of Boyne Archives

I noted there.

[*Latin ed. p. 89*]

The Ordinary, having received a report from the Reverend Father regarding the irregularity of the aforementioned case, which contains, among other things, the following: "The parish priest, John N., has suffered a partial stroke, leaving his right arm and hand completely paralyzed, so that he cannot, in any part of the Mass, make the slightest movement with it, while his left arm, however, is perfectly healthy, and its strength and dexterity seem truly miraculous and providential, allowing him to perform the entire Mass sacrifice with great care and reverence, without causing any astonishment to the people, or any disturbance to his own mind and devotion, indeed, as has been heard, even to their edification." After these words, the Archbishop renewed his prayers for a dispensation, and indeed, without the assistance of another priest.

OBSERVATIONS FROM THE OFFICE. It has been noted that John N. is certainly irregular with regard to the celebration of the Mass, since he is no longer fit to exercise this ministry, according to chapter 6 concerning bodily infirmities, and from paragraph 2 concerning a sick cleric, in which it is written: "We do not permit a priest to celebrate Mass if two fingers, along with half of the palm of his hand, have been cut off from him; because we do not believe that it is possible, either because of his weakness, or without causing scandal because of the deformity of the member, to perform this action." However, we do not forbid him to perform other priestly duties. It seems that the reasons for a dispensation, which are usually those of necessity or utility for the Church to which he is attached, are lacking, since no explicit mention of these is made; and the desire to celebrate Mass is not considered a sufficient reason for a dispensation. Furthermore, it is not easy to believe that no astonishment or scandal will be aroused in the performance of the sacrifice, when the Christian people see the sacred rites performed with only one hand, and that with the left hand, knowing that it is used for the most important parts of the sacrifice. Moreover, the matter concerns a stroke, in which the danger of a relapse is ever-present. Therefore, several examples were cited in which the Holy Congregation either denied a dispensation, or granted it with strict conditions.

[*Latin ed. p. 90*]

90. Dispensations were established concerning impediments. For example, in the case of Avellino on July 7, 1770, a priest was considered who had been injured by a stroke, affecting his left arm and hand; he requested permission to celebrate the sacred mysteries in the parochial church of a small town, at a time when the people were not present, so that he might receive the alms that he needed. The Ordinary, when consulted according to custom, affirmed that he saw no deformity that would cause scandal

Translated by churchlatin.ai, a product of Boyne Archives

among the people; although he added that there was a danger in the breaking of the Host. In the case of Burgos, near the church of the Holy Sepulchre, in the year 1821, a request was made, similar to this one, and it was finally decided, for the sake of the dispensation and rehabilitation requested, at the discretion and conscience of the Bishop, for a period of three years; after the three years had elapsed, with the elevation of the chalice, etc. The Holy Congregation responded: Although the Bishop had offered prayers for the extension of the dispensation, and safely affirmed that no irreverence or scandal would arise from the celebration; and furthermore, that the spiritual needs of the Mass required alms; nevertheless, on September 18, 1824, a rescript was issued, granting the extension of the dispensation in the same form as the previous indulgence, for a period of three years, with the understanding that the Bishop would be mindful of the removal of any scandal, and to the Reverend Secretary, with the Most Holy Congregation, it was noted that this concerned not the promotion of a candidate to the priesthood, but rather one who had already been promoted, and who had furthermore become irregular without his fault; in these circumstances, the Holy Congregation showed itself to be more lenient; especially since it concerned a parish priest, for whom the Archbishop testified, that he was very deserving; to this was added the force and dexterity of his left hand, which the Archbishop testified to as being remarkable, so that he could perform all the rites perfectly, carefully and reverently, without any admiration from the people; in addition to these circumstances, examples of dispensation are lacking, as in the case of Consentina on July 13, 1725, where permission was granted to use only the left hand in the gestures, in the elevation, and in the taking of the chalice; also in the case of Baren on January 28, 1824, and in the cases of Burgos, near the church of the Holy Sepulchre, in 1821 and 1824, and most recently in Astorga on February 27, 1869, among the summary petitions.

[*Latin ed. p. 91*]

DECREE REGARDING A DISPENSATION FROM IRREGULARITY 91. After the prayers were presented and discussed before the Holy Congregation of the Council, on January 27, 1872, the following decree was issued: Concerning the granting of a dispensation and rehabilitation at the discretion and conscience of the Archbishop, provided that he celebrate Mass with the assistance of another priest, for a period of three years; and provided that, in the meantime, the illness does not worsen. The following was declared: FROM WHICH THE DECISION IS BASED: In cases of irregularity arising from apoplectic illness, although many circumstances may suggest a dispensation, the Holy Congregation should proceed with extreme caution in granting this favor, especially due to the danger that may arise during the celebration of Mass. APOSTOLIC CONSTITUTION: Sanctissimi in Christo Patris et Domini nostri Pii divina providentia Papae IX su-

Translated by churchlatin.ai, a product of Boyne Archives

per privilegiis Protonotariorum Apostolicorum « ad instar » (Concerning the privileges of Apostolic Protonotaries). PIUS, SERVANT OF THE SERVANTS OF GOD, FOR EVERMORE, TO THE MEMORY OF THE APOSTOLIC SEE. The office of the Apostolic See, which, although entrusted to Our inscrutable and divine providence, demands Our attention amidst many concerns with which We are burdened in these times, also imposes upon Us the duty to examine those concessions made by Our Predecessors, which, through the passage of time or through too broad or incorrect interpretations, have caused great detriment to ecclesiastical discipline, and to correct them, as necessity demands, to the proper understanding.

[*Latin ed. p. 92*]

We strive to restore the decrees of Our Predecessors and Ourselves; and indeed, both the gravity of the matter itself and the august liturgy of the Church, as well as the various dispositions of Our Predecessors, demand that Apostolic Protonotaries, like other officials, apply themselves to the same apostolic purpose. It has been observed, as is evident, that those who are appointed as Protonotaries ad instar, with insignia and privileges granted by the benignity of the Roman Pontiffs, have sometimes, due to their own faults or, indeed, due to the immoderate weakness of human nature, in the interpretation of these privileges and honors, or through ambition, been found outside the city, and that not a few of these Protonotaries, through a grave offense against the dignity of the episcopacy, have dared to claim privileges that were not due to them, especially in the performance of liturgical functions. Since frequent complaints about such abuses have been brought to Us by not a few Bishops, and are still being brought, We have entrusted to a special congregation, composed of some of Our Most Reverend Brothers Cardinals, entrusted with the safeguarding of the sacred rites, and of certain Prelates of the Roman Curia, the task of eliminating these abuses and of establishing certain rules by which the privileges of Apostolic Protonotaries ad instar shall be clearly defined, and the manner in which these privileges are to be used shall be strictly observed. This congregation, which We considered should be carefully and diligently examined, after thoroughly considering the matter, held a meeting on the 18th of last April, and, having completed its deliberations, decided upon the following:

I. Apostolic Protonotaries ad instar, raised to this honor by the Supreme Pontiff, are, by that very fact, included among the Domestic Prelates.

II. Although they possess the habit of Prelacy, namely: the talar vestment with train, the fascia, and the pallium or mantelletto of violet color with a violet collar and shoes, as well as the biretta, which, however, must be

Translated by churchlatin.ai, a product of Boyne Archives

entirely black.

[*Latin ed. p. 93*]

Constitutio 93, III. Hoc habitum Praelatitium, cum Rochetto subtus palliorum adhibere poterunt in publicis supplicationibus aliisque sacris functionibus; in reliquis vero Rochettum dimittant; simulque sciant numquam sibi licere, praeterquam in celebratione Missae Pontificalis, Crucem pectoralem et Annulum deferre. I V. Habitu privato incedentibus, fas erit iisdem Protonotariis, retento usu collaris et caligarum violacei coloris, induere vestem talarem nigram fimbriis globulisque rosaceis ornatam, circumcingere illam ad lumbos parva fascia violacea, pallium item violaceum superimponere ac pileo nigro vittam seu chordulam sericam rubri coloris, auro tamen non intertextam, adiungere. V. Habitu Praelatitio induti, quoscumque Clericos Presbyteros, Canonicos singillatim sumptos nec non Praelatos superiores Ordinum Regularium, quibus Pontificalium privilegium non competat, praecedunt; minime vero Vicarios Generales vel Capitulares, Canonicos collegialiter unitos et Abbates. VI. Si in habitu Praelatitio sacris functionibus assistant, non genuflectant, sed caput Cruci inclinent, uti fieri solet a Canonicis Ecclesiarum Cathedralium, duplici ductu thurificentur et consideant iuxta ordinem nuper indicatum. VII. Si forte Canonicatu aut Dignitate in aliqua Ecclesia potiantur, habitum ibi gestent sui ordinis proprium, non Praelatitium: excepta tantum veste poterit, eoque consideant et talari, quae violacea esse incedant loco, qui ipsis ratione Beneficii competit. Quod si habitu Praelatitio uti nihilominus velint, sedem occupent ipsis superius assignatam et pro ea vice distributiones quotidianas amittant, quae sodalibus accrescant. VIII. Indulto gaudeant privati Oratorii ab Ordinario visitandi atque approbandi, in quo, diebus etiam solemnioribus, in consanguineorum et affinium secum cohabitandum, nec non famulorum suorum praesentia, Missam vel vel per quemcumque Sacerdotem per se celebrare, saecularem vel cuiusvis.

[*Latin ed. p. 94*]

94. They may freely celebrate the canonical observance of their regular Order, duly approved. However, they should be aware that they are entirely exempt from the privilege of the portable altar.

X. They have the right to assist at Pontifical Masses and to sit behind the participating Protonotaries.

X. They can perform the canonization of Servants of God, provided that the acts of the cause are in the place where they reside, but no member of the College of Participating Protonotaries shall be present for the Beatification and the granting of the privilege.

XI. They are rightly chosen as Conservators of Regular Orders, as Synodical Judges, as Apostolic Commissioners, and as Judges appointed by

Translated by churchlatin.ai, a product of Boyne Archives

the Supreme Pontiff for ecclesiastical and benefice matters. Furthermore, they themselves properly pronounce the Profession of Faith, to which they are bound by office. Furthermore, before them, pensions can be transferred from those who enjoy the aforementioned privilege.

XII. However, the Participants should remember that, unless they are Apostolic Protonotaries, and notwithstanding the privileges mentioned above, they are in no way exempt from the jurisdiction of their local Ordinaries, but are entirely subject to them, according to the rules, and, therefore, they can never perform Pontifical functions without the express consent of those Ordinaries.

XIII. They may, however, celebrate a solemn Mass on the days and for the solemnities that the Ordinary, with his permission, wishes to be celebrated in a church, even if it is exempt, provided that they obtain the consent of the Prelate to whom that church belongs; therefore, these aforementioned Protonotaries should not consider it permissible to perform the solemn Sacred Office with the same rites and pomp that are entirely appropriate only to the Episcopal dignity, which in all respects suits them.

XIV. Therefore, they should privately enter the church where they are to solemnly celebrate the divine mysteries. They should not dare to assume the pontifical *pileum* (mitre), nor the *clericum* (a type of ecclesiastical vestment), nor should they bring even one prebendary with them; they should not allow themselves to be associated with the clergy of the church in the temple vestibule; and finally, they should not sprinkle the people with holy water there.

[*Latin ed. p. 95*]

Constitution regarding the asperging, 95, nor may they themselves within the Church bestow blessings. Item, they shall abstain from presuming to use the seventh candlestick upon the altar; sacred vestments they shall take and lay down, not from it, but in the sacristy; and they shall not sit in the faldstool, nor yet upon the throne; but together with the ministers, they shall sit upon a bench covered with a carpet or cloth of the color appropriate to the day. They shall not use the Canon, nor the pastoral staff, nor the fan, nor shall a presbyter assist them; they shall wash their hands only once after the Offertory, at the altar. Finally, they shall not say "Peace be with you," in place of "The Lord be with you," when greeting the people, nor shall they impart the triple blessing at the end of Mass.

XVI. Regarding ornaments, they may, namely: wear shoes adorned with tassels, pontifical garments of silk, and also use these sandals, but only of silk, neither with gold nor with croziers without a Phrygian cap of gold or silver, dalmatics, tunics, a ring with a single gem, a pectoral cross without any gems, with a silk cord of violet color, a simple mitre made of white cloth with silk lappets of red color, and a black skullcap, but only when

Translated by churchlatin.ai, a product of Boyne Archives

wearing the mitre.

XVII. These themselves may not, in Masses for the Dead, assume pontifical ornaments in processions, and in any other ecclesiastical functions, unless perhaps they precede or follow a solemn Mass; they shall always lay aside, in such functions distinct from the Mass, the crozier with the dalmatic and tunic.

XVIII. In private Masses, regarding clothing, ceremonies, ministers, the adornment of the altar, and the number of candles, they shall not differ from a simple priest, and therefore they shall not use any of the pontifical ornaments permitted to them for a solemn Mass, and they shall abstain entirely from all and each of the rites forbidden to them in that solemn Mass.

"But since Protonotaries, like participants, may not, in the city, exercise the pontifical privilege, because of the presence of the Supreme Pontiff, therefore it is permitted to them in Rome that..."

[*Latin ed. p. 96*]

Constitution 96, according to the custom observed there, may be permitted in private Masses, provided that those wearing the habit of Prelates prepare themselves for those absolutions, performing the actions of grace only in a small way, kneeling without any other gesture under the Mass, before the altar, lying prostrate with both knees and one knee on the floor; taking the sacred vestments from the same altar, using the maniple, and having a priest wearing a stole unfold the pages of the Missal; however, with regard to the particular statutes and customs observed in the patriarchal basilicas, and with due caution, they must entirely abstain from the ring and pectoral cross, from the removal of the biretta, from the greeting of the people with the words "Peace be with you," from the triple blessing at the end of Mass, and from other rites and ceremonies, unless by the express authority of the Cardinals and Bishops of the Holy Roman Church.

XX. The privileges thus far enumerated are those which are granted solely to Protonotaries, as if by the Apostolic See. Those who have duly received such a title shall not exercise these privileges in any other way, unless they have previously presented Apostolic Letters or a legitimate diploma of their appointment in the office of Secretary of the College of Protonotaries Participating, which shall contain the name, surname, age, country, and qualities of the new Protonotary, and the date of the aforementioned Apostolic Letters or diploma; unless, moreover, before the Dean of the Protonotaries Participating, or by themselves, if they are in Rome, or even by a legitimate procurator, if they are elsewhere, they have made a profession of faith and an oath of fidelity, and unless, finally, they have presented an authentic document, in the name of the entire College of Protonotaries Participating, signed by the Dean and Secretary of this College and sealed with the seal of the College itself, to the Ordinary, together

Translated by churchlatin.ai, a product of Boyne Archives

with a printed note of the honors, privileges, and prerogatives inherent in the office of Protonotary, in the form of the present Decree, with the same subscriptions and seal as above.

[*Latin ed. p. 97*]

Constitution 97, Section XX, I. Those who presume to act otherwise or to make use of privileges and rights other than those mentioned above, if, after being warned once and twice by the Ordinary, they do not comply, shall thereby lose the honor of Protonotary and be considered private individuals.

XXII. What has been decreed above concerning the use of Pontifical vestments and the manner of celebrating a private Mass, with regard to Protonotaries as if they were participants, shall be strictly observed by all Prelates of the Roman Curia, to whom the privilege of Pontifical vestments pertains by virtue of other Constitutions or special Apostolic Indults. If, however, any Prelates or Colleges of Prelates believe that they have been granted greater prerogatives in this matter, they shall present their particular rights to the Congregation of Sacred Rites, so that what is deemed appropriate according to the prescriptions of canon law may be duly determined.

XXIII. Since, among the privileges with which certain Cathedrals and other distinguished Churches outside the city have been adorned by the Holy Pontiffs, it has also been repeatedly granted that the Canons of these Churches may enjoy the title of Protonotary, as if they were participants; it is to be understood that such titles, granted to individual Canons by the benignity of the Holy See, do not imply that the privileges granted to these Canons are also their own, but rather, according to the rule transmitted by the Sacred Congregation of Rites in a general decree of April 27th and confirmed by the aforementioned Constitution of Pope Pius VII, "Idibus Martii," of December of the same year, in the year 1818, "The laws and conditions established in Apostolic Indults must be carefully and diligently observed, and it is not permitted to anyone to exceed the limits of the concession at their own discretion, or to wear such insignia in the Roman Curia, or to receive them individually and outside..."

1. See, if you wish, the Constitution of Pope Pius VII, recently published, which begins with the words, "Decet Romanos Pontifices," published on July 4, 1823, which you have in Volume III of these annals, page 569; and also the opinion of the Sacred Congregation of Rites, found there. Acts, Volume VII, Session LXXIV, 7.

[*Latin ed. p. 98*]

Constitution 98: "The functions attributed to the College are those which pertain only to the body itself." XXIV. Furthermore, the aforementioned Congregation did not intend by this Decree to detract in any way from the

Translated by churchlatin.ai, a product of Boyne Archives

rights, privileges, and exemptions of the College of Protonotaries Participating, according to the Apostolic Constitutions, and especially according to the Letters in the form of a Brief entitled "Quamvis peculiares facultates," dated February 9, 1853, in so far as these pertain to the matter at hand.

"We, therefore, who with sincere desire seek to maintain a certain order in all things, having considered all and each of the matters and provisions set forth by the aforementioned Congregation, by Apostolic Authority, by the tenor of the present document, confirm and approve them, and, with full knowledge and by the fullness of Apostolic Power, we establish, order, and sanction them.

"We decree that these present Letters, even though those who may have a right or interest in the matters contained herein, or who may claim to have such a right or interest in any way, have not been called and heard, nor have they consented, must be observed perpetually and inviolably by all to whom they now apply and to whom they will apply in the future; and that these, at no time whatsoever, may be declared invalid, impugned, or subjected to any legal remedy, action, or claim, on any pretext whatsoever, by reason of alleged fraud or deceit, or by any other substantial defect or flaw, or by any other reason whatsoever; but that they must always and forever remain valid and effective, and produce and obtain their full and complete effects.

"And so it shall be, and in no other way, by any Judges Ordinary or Delegates exercising any authority and power, or by those shining with honor, preeminence, and dignity, even those concerned with causes, Auditors of the Apostolic Camera, and Cardinals of the Holy Roman Church, even as Legates, Vice-Legates, and Nuncios of the Apostolic See, with all their authority and power removed."

1. You will find such a Constitution in Appendix I.

[*Latin ed. p. 99*]

Any constitution whatsoever, defined in any other way, and which ought to be defined, and any interpretation thereof, shall be declared null and void, and shall be judged and also rendered void, if, concerning these matters, anyone, knowingly or unknowingly, should attempt to alter them in any way. "Notwithstanding, insofar as it is necessary, Our and the Apostolic Chancery's rule 'De iure quaesito non tollendo' [Concerning the law not being overturned], and any special or general Apostolic Constitutions and privileges, graces and indulgences, also with Apostolic confirmation or any other form of Apostolic validity, under whatever terms and letters and forms, and with whatever clauses and decrees, whatever Chapters, Colleges, and even particular persons, shining with whatever ecclesiastical or secular dignity, however specific and individual they may be, granted at any time, and also any customs, even those of immemorial standing: all of these and each of these, even if a special, specific, and individual mention,

Translated by churchlatin.ai, a product of Boyne Archives

or any other expression, were to be made of them and their entirety, or any other suitable form were to be used to preserve them; their contents shall be considered as if, without omitting anything at all, and with the form therein observed, they were inserted in the present document, for the effect of all the aforementioned, and each of them, to be fully and completely, and specially and expressly, We declare and intend to derogate from, and to have derogated from, all others that may act in any way to the contrary. "We wish that these Letters, transcribed and printed, but nevertheless signed by the hand of a public Notary and sealed with the seal of a person constituted in ecclesiastical dignity, shall have the same faith in judgment and be applied to them, as would be given to them outside of this document, if they were exhibited or shown. "Therefore, it is not permitted to any human being whatsoever to infringe this page of Our confirmation, approval, constitution, ordination, sanction, decree, derogation, and will, or to dare to contradict it presumptuously. If anyone should attempt to do so,

[*Latin ed. p. 100*]

Let him who has accepted Constitution 100 know that he has incurred the indignation of Almighty God and of the Blessed Apostles Peter and Paul. "Given at Rome, near Saint Peter, on the fourth day before the Kalends of September, in the year one thousand eight hundred and seventy-second since the Incarnation of the Lord, in the seventeenth year of Our Pontificate." F. CARD. ASQUINIUS C. GORI SUBDATARIUS VISA DE CURIAI. DE AQUILAE VICECOMITIBUS Loco ïfr Plumbi I. Reg. in Secretaria CUGNONIUS Brevium. APPENDIXI. Apostolic Letters, concerning those things, were published to the venerable in Xanten on the ninth day of February, in the year 1853, by the Apostolic Protonotaries, declaring and limiting privileges. Pius PAPA IX. FOR PERPETUAL REMEMBRANCE. Although certain faculties and privileges have been granted and bestowed by the generosity of the Roman Pontiffs to certain individuals or Colleges, in order to reward their merits or to enhance their dignity, we nevertheless deem it necessary to regulate, and indeed even to abolish, those that we find to be less opportune for the times and less conducive to the public good. Furthermore, in this Roman Church, there is a most ancient College of seven Notaries, instituted by our predecessor Saint Clement I, to record for posterity the deeds and testimonies of the martyrs, who, later, because of the excellence of their service, were called Protonotaries, and were adorned with many and singular privileges. Indeed, our blessed predecessor Sixtus V confirmed the ancient privileges, but also granted new and greater ones through his Apostolic Letters, sealed with lead, dated the ninth day of February in the

Translated by churchlatin.ai, a product of Boyne Archives

year 1586.

[*Latin ed. p. 101*]

Appendix 1. 101. Moreover, the same College of Protonotaries, having been reduced to a few members due to past circumstances, was almost extinct; therefore, I recall that Our Predecessor, Gregory XVI, through his Constitution issued on the 15th of February in the year 1838, restored it to its original number of seven and its former splendor. Now, having observed certain privileges contained within the aforementioned Letters of Sixtus V, which do not seem suitable to the present condition of times, nor to the public good; therefore, we have deemed it necessary to regulate some of them, or to subject them to certain conditions, while others should be entirely abolished. Indeed, the privilege of being promoted to the doctorate in both Canon and Civil Law, which was granted to the College of Protonotaries by the aforementioned Letters of Sixtus V, has long been regulated, and restricted by Our predecessor, Benedict XIV, through his Apostolic Letters dated the 3rd of September in the year 1744, by which he defined and decreed that only four Protonotaries Apostolic, provided they are present in the city and not absent, may receive the doctoral degree in either or both laws, after a diligent and rigorous examination personally and collegially conducted by the Protonotaries themselves, according to the Apostolic Brief of Urban VIII, promulgated on the 5th of September in the year 1629; and subsequently, Benedict XIV, in the aforementioned Letters, increased this number as a testimony of benevolence and honor towards the College of Protonotaries, granting them, for the future, not only four, but six persons present in the city, who may receive the doctoral degree in either or both laws, observing the forms and conditions specified and explained therein. Therefore, having the common good before Our eyes, with certain knowledge and mature deliberation, We, derogating from the aforementioned Apostolic Letters of Sixtus V, Urban VIII, Benedict XIV, and Gregory XVI, Our Predecessors, as far as necessary, and only in those matters which are contrary to this Our Constitution, declare that the privilege of receiving the doctoral degree or laurea in Theology, and in either or both laws, is confirmed and ratified for the Protonotaries Apostolic, commonly called "participants," observing, however, the conditions explained below; but in Philosophy, Medicine, and other arts or sciences and disciplines, We entirely abolish and annul it. We wish and command that only four persons in the faculty of Theology, and four also in either or both laws, who are present in the city, may be able to receive the doctoral degree, and that those who request the doctoral degree must previously refer their case to Us and to Our Successors in the Apostolic See, otherwise the granting of the doctoral laurea shall be null and void. We also decree that, as was previously prescribed by Benedict XIV, if the number of persons to be promoted to the degree of doctor exceeds, for any reason, the number established in

Translated by churchlatin.ai, a product of Boyne Archives

a given year...

[*Latin ed. p. 102*]

102 Appendix I cannot be considered complete, and it cannot be fully fulfilled in subsequent years. Furthermore, We command that at least five Protonotaries convene to establish the examination of candidates; if, due to the impediment of some of them, this number cannot be reached, professors of the Archgymnasium of Rome should be added to complete it; finally, that in such an examination, all that which is prescribed by Our Predecessor Leo XII in his Constitution "Quod divina sapientia" concerning the preservation of the knowledge necessary for those being promoted to the doctoral degree, must be observed: if they do otherwise, We declare the concession of the doctoral laurea to be invalid. We also desire and command that they inform the Congregation of Cardinals of the Holy Roman Church, which is responsible for overseeing studies, each year regarding the degrees conferred, and that, according to the aforementioned Constitution of Benedict XIV, a note describing the promotions, with the names and surnames of those promoted, be delivered to the Urban Archive by the Secretary of that College, or by the promoted themselves, within one month from the date of each promotion; and that, after such a note has been delivered to the aforementioned Archive, the person promoted to the doctoral laurea should be considered legitimately promoted for all legal purposes, otherwise, no doctorate exists, and it is invalid, and no suffrage will be granted to the promoted in any way. However, regarding the privilege that these Protonotaries enjoy according to the aforementioned Constitution of Sixtus V, We desire and command that one Protonotary be created each year, without any exceptions or privileges, that is, merely in title; and that, in the future, unless We and Our Successors in the Apostolic See have previously consulted, they may not promote anyone to this honor and degree, nor be able to do so. Furthermore, We completely deprive these Protonotaries of the faculty of creating notaries, or public scribes. Moreover, We completely abolish and annul the privilege, according to the aforementioned Constitution of Sixtus V, which was granted to these same Protonotaries, namely, the legitimizing of spurious and other children born from any illicit union for the inheritance of any goods, either by will or intestate succession, and declaring them suitable for any honors, dignities, and offices, whether public or private, as is more fully contained in the aforementioned letters of Pope Sixtus V. Furthermore, We plainly declare to be invalid and completely abolish another privilege, so that both Apostolic Protonotaries themselves, and their relatives, affine, and family members, whether in the City or throughout the entire ecclesiastical jurisdiction, may carry prohibited weapons without special permission, and may obtain and possess a license to do so. Since Roman Pontiffs have been accustomed to confer this honor upon other ecclesiastical men besides the

Translated by churchlatin.ai, a product of Boyne Archives

seven Protonotaries commonly called participants, so that although they are not among the number of participants, they are considered to be like them, therefore, in order that a greater distinction may exist among them, We desire and command that the seven participating Protonotaries be freed and exempted from the jurisdiction of the Ordinaries of their places, and be immediately subject to Us and the Apostolic See.

[*Latin ed. p. 103*]

Appendix I 103: Those who are subject to the concession of Pope Sixtus V remain so; others, namely the Protonotaries, whether they participate [in the College], or have already been elected to this honor, or are to be elected in the future, are entirely subject and considered to be under the jurisdiction of the Ordinaries, according to the rules of common law, just as we hereby completely subject them to the jurisdiction of the Ordinaries, and therefore, without their consent, they will never be able to exercise pontifical functions. Furthermore, we ratify and confirm the privilege of the portable altar for the participating Protonotaries, but with this law and condition: that they may never erect it in the houses of others, except when, by reason of travel or hospitality, they are staying in those houses, and that the Mass, which is always to be celebrated on the aforementioned portable altar, whether by themselves or by another priest, secular or regular, duly approved, must always be celebrated in a place that is to be erected, even on solemn days, and that the Protonotaries themselves, and their relatives and affines who reside with them, and those persons who are devoted to their service or company, will never be compelled to assist at the fulfillment of an ecclesiastical precept. However, for the Protonotaries who participate [in the College], who have already been created, or who will be created in the future, we abolish the privilege of the portable altar, and we grant them only the indulgence of having their private oratory visited and approved by the Ordinary, in which, even on solemn days, in the presence of their relatives and affines who reside with them, and of their servants, they may freely celebrate Mass, either by themselves or by any secular priest, or by a priest of any religious order, duly approved. These things We establish, decree, and command, notwithstanding Our own and the Apostolic Chancery's regulations concerning legal matters, without invalidating them, nor the aforementioned letters and other constitutions and apostolic ordinances of Our predecessors, Sixtus V, Urban VIII, Benedict XIV, and Gregory XVI, which deserve special mention, nor the statutes and customs of the aforementioned College of Protonotaries, also confirmed by an oath, by apostolic confirmation, or by any other means; and also, any privileges, indulgences, and apostolic letters that may have been granted to the contrary of the foregoing, We hereby confirm and renew; and all and each of these, having their full force and effect, and inserted verbatim, shall remain in force for the purpose of the foregoing, but only for this oc-

Translated by churchlatin.ai, a product of Boyne Archives

casion, specially and expressly derogating from them, and from any other contrary provisions whatsoever. "Given at Rome, at St. Peter's, under the Fisherman's ring, on the ninth day of February, in the year 1853, in the seventh year of Our pontificate." A. CARD. LAMBRUSCHINI.

[*Latin ed. p. 104*]

FROM THE HOLY CONGREGATION OF THE INDEX: Decrees pertaining to the Index are returned. The present Decree also contains books prohibited, which had not yet been authentically promulgated after the invasion of the city [Naila]. Refer to the information regarding the Decree which I provided in Volume VI, page 336. DECREE [February 23, 1872]. The Holy Congregation of the Most Eminent and Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Pope Pius IX and the Holy Apostolic See, concerning the Index of books of corrupt doctrine, and their condemnation, proscription, expurgation, and permission throughout the Christian Republic, held in the Apostolic Palace at Vatican on September 23, 1872, condemned and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of Prohibited Books: ROBERTO ARDIGÒ: *La Psicologia come scienza positiva*. Mantua, at the press of Viviano Guastalla Publisher, 1870. *Delle principali questioni politiche-religiose* by GIACOMO CASSANI, professor of Canon Law at the Royal University of Bologna, Volume I: *Dei Rapporti fra la Chiesa e lo Stato*. Bologna, Royal Typography, 1872. *Rinnovamento Cattolico*. A Bolognese periodical. Bologna, Royal Typography. *De l'organisation du Gouvernement Républicain* by PATRICE LARROQUE, Paris, 1870. *Die Macht der römischen Päpste über Fürsten, Länder, Völker und Individuen, etc.* – In Latin: *Potestas Romanorum Pontificum, in Principes, Regna, populos, singulos homines iuxta ipsorum doctrinas et actus ad rite aestimandam eorum infallibilitatem, illustrata* by Doctor JOH. FRID. Equité DE SCHULTE, O.P., Professor of Canon and German Law at the University of Prague. Prague, 1871, at F. Tempsky (Decree of the Sacred Office, Thursday, March 15, 1871). *Haeresis Honorii* and the Vatican Decree on Papal Infallibility, by Professor EMILIO BUCKGABER (Decree of the Sacred Office, Thursday, April 26, 1871). The author commendably submitted himself and disapproved of the work.

[*Latin ed. p. 105*]

Decree 105: *S. Joseph, Patron of the Universal Church*, by the Reverend Father GIUMORENA, of the Congregation of the Mission. Verona, 1870. Episcopal Printing Press of St. Joseph (Decree S.O., Thursday, June 7, 1871). The author commendably submitted and approved the work.

Is the doctrine of the infallibility of the Roman Pontiff Catholic? by WENZELIOSEPHREICHEL, Vienna, 1871. – In Latin: *Doctrina de Infallibilitate Romani Pontificis estne catholica?* by WENCESLAOIOSEPHOR-

Translated by churchlatin.ai, a product of Boyne Archives

EICHEL, Vienna, 1871 (Decree S.O., Friday, June 22, 1871).

The Roman Catholic Church and the Greek-Russian Orthodox Church, and in what they differ from each other. Florence, 1869, Barbèra Printing Press (Same Decree).

The position of Councils, Popes, and Bishops, from a historical and canonical standpoint; and the papal Constitution of July 18, 1870, with supporting documentation. – In Latin: *Iura Conciliorum, Pontificum, et Episcoporum expensa ex historicis et canonicis fontibus; atque pontificia Constitutio 18 Iulii 1870 cum documentis probantibus,* by J. F. Equite DISCHULTE, Ordinary Professor of Canon and German Law at the University of Prague. Prague, 1871, at F. Tempsky (Decree S. Off., Thursday, September 20, 1871).

An examination of the decree of July 18, 1870, concerning infallibility, and its ecclesiastical binding force. – In Latin: *Decretum 18 Iulii 1870 de infallibilitate atque eiusdem ecclesiastica vis obligandi in examen vocatur.* A pamphlet published by Doctor J. F. Equite DESCHULTE, etc. Prague, 1871, at F. Tempsky (anonymous author). (Same Decree).

A memorandum concerning the relationship of the State to the principles of the papal Constitution of July 18, 1870, dedicated to the governments of Germany and Austria. – In Latin: *Memorandum de relatione status ad Sententias Constitutionis Pontificiae 18 Iulii 1870, dedicatum guberniis Germaniae et Austriae* by Doctor J. F. Equite DESCHULTE, etc. Prague, at Frid. Tempsky, 1871 (Same Decree).

The incompatibility of the new papal decrees of faith with the Bavarian constitution. – In Latin: *Novorum decretorum fidei a R. Pontifice editorum inconciliabilis pugna adversus constitutionem Bavaricam, demostrata* by Doctor IOSEPHOBERCHTOLD, Extraordinary Professor of Law at the University of Munich. Munich, 1871 (Same Decree).

The Catholic Church without a Pope. – In Latin: *Ecclesia catholica sine papa,* by THOMABRAUN, Priest, Dioecesis Passaviensis. Munich, 1871 (Same Decree).

A letter to a German bishop concerning the Vatican Council, from Lord Acton. – In Latin: *Epistola ad unum ex Episcopis Germanis Vaticani Concilii missa a Domino ACTON.* Nordlingen, 1870 (Same Decree).

[*Latin ed. p. 106*]

106. Decree Concerning the History of the Vatican Council by Lord ACTON. In Latin: *Ad Historiam Concilii Vaticani, auctore Domino ACTON*. Munich, 1871 (Ibid. Decree). The Vatican Council, considered critically with regard to Lord Acton's letter and Bishop von Ketteler's response. In Latin: *Concilium Vaticanum in relatione ad Epistolam Domini Acton et ad responsionem Episcopi de Ketteler, critice consideratum a Doct. EBERHARDO ZIRNGIEBL*, Munich, 1871 (Ibid. Decree). A diary

Translated by churchlatin.ai, a product of Boyne Archives

kept during the Vatican Council by Doctor F. FRIEDRICH, Professor of Theology, etc. In Latin: *Diarium tempore Concilii Vaticani, exaratum a Doct. T. FRIEDRICH, Prof. Theologiae, etc.*, Nordlingen, 1871 (Ibid. Decree). A small Catholic Catechism on Infallibility. A booklet for instruction, by a society of Catholic clergy. In Latin: *Parvus Catechismus Catholicus de infallibilitate: libellus ad instructionem conscriptus a societate Catholicorum Ecclesiasticorum*, Cologne and Leipzig, 1872 (Decree S. O., Thursday, July 31, 1872). Therefore, no one, of whatever rank and condition, may dare to publish or, having published, to read or retain the aforementioned works, in any place and in any language, but rather they are bound to deliver them to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to the Most Holy Lord Pope Pius IX by me, the undersigned, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given at Rome on October 1, 1872. ANTONINUS Cardinal DE LUCA, Prefect. Father VINCENT MARIA GATTI, Order of Preachers, Secretary of the Congregation of the Holy Office. L. S. On October 10, 1872, I, the undersigned Magister Cursorum, testify that the aforementioned decree was affixed and published in the City. PHILIPPUS OSSANI, Mag. Curs.

[*Latin ed. p. 107*]

FROM THE HOLY CONGREGATION OF RITES OF ROME, OR OF THE CISTERCIAN ORDER, CONCERNING THE CONFIRMATION OF THE CULT GIVEN TO THE SERVANT OF GOD, EUGENIUS III, POPE, HOLY AND BLESSED. The matter pertains to a case similar to that which we explained in Volume V, page 426, concerning Blessed Urban V. The matter appears to be somewhat singular, that in these days, in which the Roman See rejoices greatly amidst the waves of barbarity, these Holy Pontiffs arise, who, almost forgotten in the depths of antiquity, bring their merits to light, with which their apostolic life was crowned after their death; whose merits have reached us to such an extent that it would be fitting that their memory be more fully recalled, and that they be numbered among those whom the Roman Church venerates among the Blessed Pontiffs. The cause was promoted by the General Superior of the Cistercian Order. After the process was completed in Rome, in the Tribunal, by the Most Reverend Urban, Vicar of the City, in accordance with the recently published Decree found in Volume IV, page 32c, from the Holy Roman Congregation, the aforementioned Most Reverend Vicar of the City issued a judgment, in which, after setting forth twenty reasons for his decision, he decreed: "That the public and ecclesiastical cult of the Servant of God, Eugenius III, Pope, Holy and Blessed, has been rendered from time immemorial, and that it has never been interrupted, but continues to this day; therefore, that the case

Translated by churchlatin.ai, a product of Boyne Archives

is excepted from the Decrees of the Blessed and Holy Pope Urban VIII."

[*Latin ed. p. 108*]

Concerning the cause of Blessed Eugene III: Such a judgment ought to have been confirmed by the Holy Roman Church, and subsequently by the Roman Pontiff. Therefore, after all the acts were transmitted to the Holy Roman Church, the cause was presented according to the established procedure, as I have explained in the preceding chapters. Concerning the outline of his life: The Servant of God was born in the town of Montemagno in the diocese of Pisa. How he behaved in his early youth is unknown. But devoted to the clerical life, and having been initiated into the priesthood, he was received among the Canons of the diocese of Pisa. Endowed with doctrine and virtues, he held the office of Vice-Dom, whose grave duty it was to administer and protect the goods of the diocese in place of the Bishop. In the year 1134, when Saint Bernard came to Pisa, he joined him as a disciple and adopted the monastic habit at Clari Valle, and thenceforth he performed various duties in that monastery. When new monasteries were to be established, he was designated as Abbot for the monastery of Fabariensis; but by the counsel of Divine Providence, it happened that he was not appointed to that monastery, but to another near the beloved City, that is, at Aquas Salviae, which bears the title of Saints Vincent and Anastasius. At that time, Arnold of Brixia, having been accused by the civil authorities of the Roman Pontiffs and condemned by Innocent II, had taken refuge in France until the death of Celestine II. Under Pope Lucius II, he again incited the Romans to sedition; and in order to quell this, Lucius gathered soldiers, but struck by a stone near the Capitol, he finally died. When the Church was widowed in these difficult circumstances, the election of a successor was of the utmost urgency. On February 27, 1145, the Cardinals, by unanimous vote, elected, contrary to custom, the Abbot of the monastery of Saints Vincent and Anastasius at Aquas Salviae, who, although unwilling, having become the Supreme Pontiff, assumed the name of Eugene. From the very beginning of his pontificate, due to the factions of the citizens, who threatened to depose him unless he renounced the civil principate, he was forced to withdraw from the city and took refuge in the fortress of Monticelli, from which he came to Fabari, and where, on the first Sunday of March, before

[*Latin ed. p. 109*]

The cause of canonization of Blessed Eugene III was initiated by the Pope before the Sacred College of Cardinals. Afterwards, he went to Viterbo, where he exercised his apostolic ministry, also having Saint Bernard as an advisor, whom he had previously had as a teacher. Therefore, residing in Viterbo, he received legates from England, Scotland, Germany, Spain, and France, who had come there to offer their respective nations' obedience and

Translated by churchlatin.ai, a product of Boyne Archives

submission to the new director of the Church. From the East, bishops of the Armenian Church were also sent as legates, to offer their obedience and to report to him on various urgent matters concerning the Eastern Church. On the day when the consecration of the Basilica of the Princes of the Apostles is commemorated, he showed the Armenian bishops residing in Viterbo the rite of the Latin Church, and as he celebrated the sacred rites, a brilliant light appeared above his head, in which two doves flew, which afterwards were held as a symbol of this Pope. He subdued the rebellious Romans, who had been armed by the people of Tibur, and to whom other peoples of Latium had joined, and they begged for peace, which Eugene granted willingly, but under certain conditions; therefore, he entered Rome with great honor and the joy of the clergy and the people. However, he did not enjoy peace for long; for the rebellious, who were unwilling to bear the defeat inflicted upon them by the people of Tibur, renewed the war, and the Pope was forced to go into exile, lest he be seen as consenting. Again, he devoted his mind to curbing the audacity of the Saracens, to suppressing heresies, to restoring ecclesiastical discipline, to defending the rights of the Apostolic See, and to promoting virtues and sciences. To hinder the Saracens, he inflamed the arms of Christian princes against them and converted them. Intending to suppress heresies, at the Council of Rheims, he condemned the doctrines of Eon, of Stella, and of Gilbert; and Henry likewise suppressed the heresy of the Tolosans, especially through the efforts of Saint Bernard. Eager for the propagation of the faith, he sent Cardinal Nicholas Breakspeare to Sweden and Norway, so that these nations, which were still idolaters, might be converted to the faith, and his wishes were fulfilled. At the aforementioned Council of Rheims, to which...

[*Latin ed. p. 110*]

Under the auspices of the Blessed Eugene III, there were promulgated seventeen canons to restore ecclesiastical discipline. He promoted and reformed the studies of theology and jurisprudence, and established academic degrees. He re-established the episcopal see of Tornaci, which had long been suppressed; in Ireland, Denmark, Lusitania, Swabia, and Norway, he established metropolitan sees. He confirmed the ancient privileges of the Archbishop of Cologne and added new ones. He united the suburbicarian See of Ostia with Velletri, and also the See of St. Rufina with Oporto. From the beginning of his pontificate, he steadfastly supported and defended the rights of the Apostolic See. He excommunicated King Stephen of England and forbade the Archbishop of Canterbury from entering his kingdom, a measure which Theobald of Rheims was unable to prevent, and he condemned the king to exile. He severely reprimanded Frederick Barbarossa, who had transferred a bishop at his own discretion from one see to another, and the German bishops, for not resisting this action by the emperor. The celebrated Roman periodical, *La Civiltà Cat-

Translated by churchlatin.ai, a product of Boyne Archives

tolica*, provided a detailed account of the life of Blessed Eugene in its issue of November 16, 1872, from which we have extracted the following, rendering it into Latin: "It must not be overlooked with what zeal Pope Eugene promoted the study of literature and sacred sciences. For, besides being himself an outstanding scholar, as his letters demonstrate, endowed with doctrine, eloquence, and heavenly piety; he brought the schools of Theology and Jurisprudence into a new and better form: he added to them the academic degrees that are now commonly known as Bachelor, Licentiate, and Doctorate; he encouraged learned men to write books on these sciences; and he played a major role in promoting that intellectual culture which, flourishing everywhere in the 12th century, shines forth in this century as a well-deserved glory. Indeed, under Pope Eugene, Peter Lombard of Novara was transferred from Lombardy to France, where he became a master of renowned opinion in Paris; the monk Gratian, who in Bologna, Italy, collected and compiled the celebrated *Decretum*, which contains all of ecclesiastical jurisprudence; although it is false that Pope Eugene approved the *Decretum* with Apostolic authority, as some have presumptuously claimed, attributing to Eugene the errors that occur in it. At the command or urging of Eugene, the homilies of St. John Chrysostom, and the works on orthodox faith by Damascene, were translated into Latin by John of Burgundy, a man highly skilled in the Greek language; and the work entitled *Anticimenon*, composed by Bishop Anselm of Havelberg, in which the errors of the Greeks and their controversy with the Latins are learnedly explained, etc."

[*Latin ed. p. 111*]

Concerning the Cause of Blessed Eugene III: Zealous for the honor of God, he erected temples, or enriched them with new ornaments; suffice it to mention those between the Vatican and the Liberian Basilica. He decreed the cult of the Saints for Emperor Henry. He generously aided the maintenance of peace between republics; he was concerned with justice; he especially helped the poor; he preceded all with humility; at his request, Saint Bernard wrote "De Consideratione," which will also be useful to future Roman Pontiffs and other prelates of the Church. Among so many and such duties of the Apostolic ministry, if you ask about the reason for his private life, it can be said in a few words about him that he changed the apex of his habit from the monastery, but not the manner of living. Having omitted other things, in the year 1149 he returned to Italy and resided in Tusculum until the Romans, guided by a sounder judgment, in the year 1151, with fervent prayers, requested his return to the city. Finally, in Tibur, where he had retired during the summer, he was seized by a serious illness and fell asleep in the Lord on July 8, 1153.

CONCERNING THE CULT OF THE RELICS OF THE SERVANT OF GOD, EUGENE III, HONORED IN TIBUR, WHICH WERE TRANSLATED

Translated by churchlatin.ai, a product of Boyne Archives

TO THE CITY: They were translated to the city with a great gathering of the people; it is best to hear what was thought about his death, and what followed, from a witness, Hugo, the Cardinal of Ostia, a valued monk of the Cistercians. The Pope, Eugene, who is "the glory of the Church, the father of justice, the lover of religion," said, "I say, father, that our and your defender, stripped of the robe of flesh, on the eighth day of July, undefiled by flesh, migrated to Christ, went forth to meet Christ in the air, and thus will always be with the Lord: following the Lamb wherever He goes." His funeral, contrary to all expectation (for the Senate had almost ceased to exist), contrary to custom, was...

These outlines of his life are taken from the description of his life which was written and published in Pisa in 1868 by Joseph Saniati, a Canon of Pisa, and which he extracted from documents which he diligently sought out.

[*Latin ed. p. 112*]

For the cause of the Blessed Eugene III, "the custom was such that for two days they were celebrated by the clergy and the people, so that one might believe that he who reigned in heaven was being honored on earth. O, how great was the grief of all, and especially the lamentations of the orphans and widows! One would say that he was with God, who so lamented among the people: undoubtedly, he was snatched away from the snare of the hunters; the snare was broken, and he himself was deemed free. He was taken, as we believe, by him whose conscience we know, even unto us, leaving behind only orphans; but he will not abandon them, for he will pray to God the Father and the Only Begotten, together with the Holy Spirit, who is God, blessed forever. His body, according to the account of Peter, was hidden with the bodies of the Levites, as was the custom, in a sarcophagus, where are also the bodies of Pope Peter III and the Blessed Mallius, a contemporary witness. Regarding the reason for this event, when questioned in the ordinary process, witness X, the most illustrious Father Victor De Buck, a writer, responded: "It should be noted that it was customary in that age for those who died with a reputation for great sanctity to be placed in the tombs of others, and their bodies were added to the bodies of the Saints, or their deceased children, with the grace of baptism. Regarding this matter, one should see what was written in the recognition of the body of Saint Eutropius, Bishop of Sanctonensis, by the Most Reverend General Vicar of Rupellensi, now Bishop of another see, namely Blesensis, whose name is Ludovicus Pallu, of two parishes. The placement of the body of a servant with the relics of other Saints of God is an indication of public veneration, as Tradition teaches, according to Benedict XIV, book 2, chapter 23, paragraph 5. Contemporary authors also relate that God wished to attest to the sanctity of Eugene through miracles; and a certain witness from Larissa testified to this, saying: "Few things of the many that were done

Translated by churchlatin.ai, a product of Boyne Archives

by the operation and power of God in those days, we have seen and have verified as true, and we have judged worthy of being written in memory... In Rome, there was a certain man, and he was a priest, who lived a life worthy of commendation. Therefore, Blessed Pope Eugene, in order that he might abandon his wickedness, admonished..."

[*Latin ed. p. 113*]

"He used to, and sometimes even when his faults demanded it, correct [others] more sharply. But that wicked man not only did not heed the warnings of Saint [Eugene], but, turning good into evil, he detracted from the holiness of Saint [Eugene] as much as he could. It happened, therefore, that on a certain day, a great multitude of people, with pious devotion, flocked to the tomb of the man of God, because of his renowned sanctity and veneration, and also because of the miracles which the Lord had worked through him there; among whom, it is said, the aforementioned priest arrived, wearing new sheepskins. And as all were glorifying Saint [Eugene] for the holiness of his life and for the miracles that were being performed, that priest, enraged, said to everyone: "Do you think that [Eugene] performs these miracles? No, it is not [Eugene] who performs these things, but Peter the Deacon." For Peter was the Deacon of Saint Gregory the Pope; for [Eugene] rests with him in his sarcophagus. Scarcely had he finished these words when, behold, divine vengeance suddenly followed the blasphemer. For a lamp hanging above poured forth oil, which flowed upon the sheepskins that he had brought with him, and, as if vindicating God, it made him a spectacle of shame to all who were present. Feeling that vengeance had come to him, by the will of God, he, overwhelmed with excessive shame, could not bear the condemnation and derision of the people who were insulting him, and he secretly fled, greatly humiliated." From this testimony of antiquity, as the advocate of this cause noted, it is evident that Saint [Eugene] was renowned by the people for his sanctity, that they flocked to his tomb for veneration, and that they believed in the miracles which God worked through him; and this, apart from two signs of public cult, one being the deposition of the body with the relics of other Saints, and the other being the lighting of a lamp at the tomb. These were fully corroborated by the testimonies of other witnesses, such as Peter Mallius, a contemporary writer; Geoffrey the Monk, a contemporary in the life of Saint Bernard, who called [Eugene] "Blessed," and recounted his holy conduct and the miracles that occurred after his death; and the anonymous author of the life of Pope Alexander III, *Acta*, vol. VII, p. 74, 8.

[*Latin ed. p. 114*]

Regarding Cause 114 of the Blessed Eugene III, Gerohus, a monk and contemporary witness, who had been appointed as a legate by Eugene in

Translated by churchlatin.ai, a product of Boyne Archives

the Kingdom of Hungary and Ruthenia; Ernald, an abbot from Bonneval, a contemporary; Alan, Bishop of Antisiodora; St. Thomas, Bishop, and John, who worked in Canterbury and Salzburg; Vincent, the "librarian of the world" in the year 1256, "illuminated": 12 Bellovacensis, who, after publishing, wrote these words: "Pope Eugene, a cultivator of justice and piety, whose virtues shine brightly in this letter, a most excellent lover of Rome...". Hermannus Carnerius in the year 1445, Wernerius Carthusianus in the year 1483, and a codex of privileges of the Order of Cistercians in the year 1431. Such witnesses extol the outstanding virtues of the Blessed Eugene, and call him, finally, with regard to this early period, the Orator noted that paintings of St. Eugene, with the title "Blessed," exist from the early part of the sixteenth century, although in some of these images, among others depicting saints, the title "Blessed" has been almost erased from the painting for some accidental reason; but that such antiquity in the images provides evidence of public veneration, Benedict XIV, Volume 2, Chapter 22, paragraph 1. With regard to the period that followed, that is, from the time of the Decrees of Urban VIII, which begins in the year 1634, the Orator stated that the extreme hand [of St. Bernard] was placed on the works of St. Bernard, Geoffrey, and in the life of the same St. Bernard, a monk contemporary with Eugene, it is written: "These things were done by our Blessed Pope Eugene III, in the same year in which the Holy Father, in holy conversation, a son migrated from this light, or from this greater darkness, to light, whose merits, in that city which he so greatly governed, are illustrated by many miracles; this was repeated by his successor in Lyons and Paris in the years 1586 and 1538, and in other editions, that is, in the Basel edition of 1552, in the collection made in Venice by Surius in 1575 and 1579, so that no one has ever contradicted this." And the Orator continued with various documents, whether from images painted in the monasteries of the Cistercians, or from the eulogy in...

[*Latin ed. p. 115*]

Concerning the cause of Blessed Eugene III, his Missals, as well as those of the same Order, or in the Calendars and Martyrologies, the cult of Blessed Eugene, or of the Cistercians, has been considered holy up to our time, as evidenced by the Decretals of Urban VIII. From the time of the Decretals of Urban, which introduced a new method of proceeding in the causes of the Servants of God, and prescribed it with the utmost rigor (although, through these Decretals, he did not wish that prejudice be brought against those who, over the course of a memorable period, or a very long time, were venerated with knowledge and tolerance by the Apostolic See or the Ordinary), it is clear that the cult of Eugene has grown considerably among the Cistercian Order up to our time. A synoptic discussion. OBSERVATIONS concerning the course of the PROMOTOR OF THE FAITH. I will present the most important ones. The Promotor

Translated by churchlatin.ai, a product of Boyne Archives

of the Faith observed that the funeral and the miracles attributed to him pertain to the private cult: all the more so, because while the people pursued this servant of God with private devotion, the Canons would recall his mortal day with expiatory prayers in the sacred action; thus it is written in two Martyrologies taken from the Basilica of the Vatican, one of which is deteriorating, and the other beginning with the 15th day. "On the sixth day before the Ides of July," "died the Lord Eugene, Pope III, of blessed memory, leaving many goods to the Basilica; for the anniversary of his death, in the year 1300." "Could expiatory prayers and public veneration of the Saints have been permitted simultaneously in the same temple? Furthermore, the praise that is given, which, when speaking of the Roman Pontiffs, was accustomed to be given indiscriminately to all in the 12th and 13th centuries, as also to the Most Blessed and the Most Holy. It seems that those who are considered among the first in ecclesiastical history have considered it necessary to abstain from giving this praise to Eugene III, as Natalis did, as well as Baronius, the Bollandists, Fleury, Henrion, Orsi, Becchetti, and many others. Alexander,

[*Latin ed. p. 116*]

Regarding the 116th reason presented by the Blessed Eugene III, it was noted that the documents cited did not pertain to the first age, but only to the 12th century; regarding the 13th century, no witness other than Vincent of Beauvais was presented; and nothing was presented regarding the subsequent 14th century. Concerning the century preceding the Urbanian Decrees, it was observed that the arguments presented were weak, and that valid documents were lacking, which the undersigned endeavored to demonstrate with particular observations. Finally, concerning the current state of veneration, the Advocate presented testimonies that were more significant than any objection, which affirmed that the memory of Eugene III was almost unknown among the clergy and the people in the diocese of Budvice and the diocese of Linz, with the exception of the Cistercian monks; indeed, he presented another witness from among these very monks, who believed that Eugene had never received true ecclesiastical veneration within the Order itself, in the strict sense; and furthermore, the same Advocate took care to confirm this with various indications.

RESPONSES OF THE ADVOCATE. The Advocate denied that the gathering at the funeral and the miracles themselves pertained to private veneration, recalling what he had previously presented regarding the great gathering of the people, the prayers implored by the people, their tears and sighs, their remedies, and their supplications for the infirmities that were obtained, thereby glorifying the name of Eugene. The anonymous author and eyewitness, whose testimony I presented above, in the Dunensis code, published by Chrysos Henríquez in the collection of Saints, chapter 17, wrote the following about the miracles of Eugene: "We have seen and

Translated by churchlatin.ai, a product of Boyne Archives

verified a few of the many things that were accomplished by the operation and power of God in those days, and as we have deemed it worthy to be remembered and written, so we have indicated: For the powers of God, which we have heard, which we have seen, we cannot but speak; those who are praised by virtues, to whom praise is due." "A certain John, surnamed Ritius, by nation and citizenship a Castellanus, had his hands and arms and feet and legs contracted. He, being full of faith and devotion, prayed to the Lord Eugene III, the Pope, for his infirmity, with many tears and sighs, and suddenly, the conjunction of tears, joy, and the prayer for his infirmity was followed by healing. This happened publicly during the canonical Vespers and was seen by all. He had suffered for three years." "Another, named Peter of Castello Formello, having a weak and rigid left hand, so that he could not use or bend it, and also having his right arm so contracted that he could neither raise nor move it for any purpose, was also..."

[*Latin ed. p. 117*]

Concerning the cause of the Blessed Eugene III: The Holy [Father] was acclaimed with unanimous approval; so that, contrary to custom, his funeral rites were celebrated for two days by the clergy and the people, so that one might believe that he who had died on earth was reigning in heaven, as a certain eyewitness, Cardinal Hugh, wrote. Indeed, the funeral rites were such that they seemed not mournful, but festive, and such were the funeral ceremonies, from which, moreover, it appeared that Eugene was worthy to be buried among the Saints, and that a lamp should burn at his tomb. These things, indeed, could not be referred to private devotion. Regarding the expiatory prayers, with which the Advocate requested that the memory of Eugene be kept alive in the Vatican temple, the Orator replied that this was asserted, but not proven, since the documents brought from the Vatican archives did not show what the Advocate intended. And, in the first place, if expiatory prayers had been recited by the Canons at some time, such prayers could well be consistent with public veneration: for the Canons could not, by their own authority, remove the burden of the anniversary office, and if, by order of the Pontiff, the Canons had omitted the anniversary prayers, the reason would already be clear: since, by judgment of approved sanctity, the prescribed office should not be omitted. Nor is this a new thing, that someone should be publicly declared a Saint, and concerning him, all other things being omitted, there are five days on which funeral prayers are recited in a certain place; and this matter was being discussed in the most recent causes in the Basilica of the Lateran Palace. Furthermore, concerning the funeral rites performed for Eugene III, no special memory remains. "On that day and at that hour, namely, while Vespers were being celebrated, before the tomb of the aforementioned 'Lord Eugene,' his weak limbs were restored to wholeness by the mercy of God." He suffered for five months, and was healed on the vigil of St. Apollinaris. And thus, the

Translated by churchlatin.ai, a product of Boyne Archives

same anonymous writer proceeds to recount other miracles; which, in the cause that we are discussing, serve to show the fame of miracles and the beginning of public veneration.

[*Latin ed. p. 118*]

Concerning the 118th reason, under the title "Regarding the Promoter of Blessed Eugene III, whether the title of Blessed or Saint applies," it is stated that the tribute pertains to those who have been recognized as Blessed or Saints. The aforementioned Orator denies this, claiming that while he concedes that the titles of Most Blessed and Most Holy were applied to those who were living and had received tributes, he does not concede that they were considered Blessed or Saints, whether living or dead. He demonstrates this with the following examples.

Petrus Mallius, speaking of Gregory III, says, "Of his sanctity, the Most Holy Gregory." Speaking of Eugene, he also says, "Of the Blessed Eugene III, this Most Holy Prelate Eugene III." Speaking of Leo, he says, "Leo, the Ninth Pope." But speaking finally of Hadrian IV, concerning whom it is not certainly known, he says, "It is known that public veneration was offered; near the tomb of D. Eugene rests Hadrian IV, of good reputation."

Gaufridus, a contemporary monk, says, "In the year in which these things occurred, the same Blessed Pope Eugene III... succeeded Anastasius."

In the acts of Alexander III, it is written, "Alexander III... from the land of Siena... was called to this Holy Roman Church by the Blessed Eugene."

Gerohus, a contemporary monk, speaking of Eugene, says, "Concerning Hadrian, he says, 'since Hadrian was a Pope.'"

Saint Thomas of Canterbury wrote a letter to Alexander, saying, "To Alexander, the Pope, Thomas, Archbishop of Canterbury, in the context of the letter: 'because he used letters to convene... to make restitution of the oaths of your predecessors, Anastasius and Hadrian, which were bound by religion... Were you a Bishop when your father forbade the messengers of the Blessed Eugene to enter his land?'"

Regarding this matter, Benedict XIV wrote in his work, c. 23, n. 1, "Concerning Canonization, I. 2: 'In truth, the authentic documents in this matter (concerning the ancient public cult) are first, written histories by men worthy of faith, who composed them one hundred years before the Constitution of Urban, or who published their works during the same century; and this not only if they testify to the cult of the Servant of God, but also...'"

[*Latin ed. p. 119*]

Even if the virtues and miracles of Blessed Eugene III were merely recounted, calling him "Blessed" or "Saint," even though this designation refers only to the person, and not to their morals, as the Reverend Father Fatinellus rightly pointed out in response 118, number 8, volume 1.

Translated by churchlatin.ai, a product of Boyne Archives

Now, since my objective was to ascertain whether anything could be deduced from these authors that would support the cult of this individual, I respond that, on the contrary, the fact that so many authors of diverse nations, in their various codes written in different places and times, approved both by Ordinaries and by Inquisitors, call this servant of God "Blessed," "Saint," or "martyr," provides the strongest evidence of the cult and veneration offered to this same servant of God, since such designations are not bestowed upon anyone except those whom we venerate as Saints.

If the question is asked, why the historical authors cited above refrained from bestowing the title of Saint or Blessed upon our Eugene, the answer was given by the witness IV in the ordinary process: "The reasons seemed to me to be such that, although the older Bollandists refrained from including his life in the *Acta Sanctorum* until the feast day of July eighth, according to the jurisprudence of the Holy Congregation of Rites, the case of Blessed Eugene appears to be entirely exempt from the decrees of Urban VIII. The older Bollandists were generally much stricter in recognizing public cults of the Saints, until their cult had been expressly approved by the authority of the Holy See or by Bishops, or until a liturgical office had been instituted concerning them. The same severity is found in ecclesiastical historians such as Baronius, Pagius, Novaes, etc., and in common hagiographical writers."

Regarding the second objection, that sufficient documents are not presented to prove the continuation of the cult before the Urbanian epoch, that is, in the 13th and 14th centuries, the Advocate responded that it is indeed regrettable that documents are lacking, but it is not permissible to doubt their existence and antiquity: on this matter, witness IV responded in the ordinary process: "I believe that the same thing has happened in previous centuries."

[*Latin ed. p. 120*]

"For the 120th cause, 'all documents concerning the suppression of the blessed Eugenius III' are presented, which lasted for sixty years." And again: "From the constant tradition of our monastery, and from those elders whom I mentioned above, I have heard that Pope Eugenius III was always held in veneration as a Blessed, not only in other places, but also in this monastery. And although those monasteries which were violently suppressed by Emperor Joseph II have been abolished, I have not heard of any images or statues of him being present in the public church for public veneration, nor any other signs of ecclesiastical worship."

Furthermore, the Advocate added that there were writers who undoubtedly spoke of Eugenius as a Blessed or a Saint, but that, upon careful inquiry, they could not be found; he cited, for the 13th century, Helinand of Munich, a Cistercian, who wrote a *Chronicon* from the creation of the world until the year 1204; Conrad of Prémontré, in his *Chronicon* until the

Translated by churchlatin.ai, a product of Boyne Archives

year 1220; James of Vitry, Cardinal and Bishop, who wrote the *Historia orientis et occidentis* until the year 1244. In the 14th century, Siffrid of Meissen wrote an *Epitome* from the year 438 to 1307; Ptolemy of Lugo, of the Order of Preachers, Bishop of Forcell, wrote in the *Annales* from the year 1060 to 1303 and 1341.

However, in such cases concerning public worship, it is sufficient to prove the beginning of the worship, the so-called Urbanian prescription, that is, that the worship lasted for one hundred years before the Decrees of Urban VIII, and the continuation of that worship until the present time.

The Advocate then made another observation concerning the documents presented for the hundred-year period preceding the Urbanian Decrees, completely denying that they were invalid, stating that, for such a period, a military image of the Blessed Eugenius was redeemed by divine splendor and marked with the title of Saint; that there was a *Missale* for the use of the Cistercian Order, in whose Appendix, among other Saints and Blesseds of the Cistercian Order, Eugenius III was listed; that there were two statues in the temple of the Altavada monastery, one from the Gospel side depicting the Blessed Eugenius, and the other from the Epistle side depicting Saint Bernard; and that it was often said...

[*Latin ed. p. 121*]

Concerning the cause of Blessed Eugene III, 121 works of St. Bernard are cited, within which the life of Eugene is contained, as that of a Blessed and Holy man, against whom no Bishop ever opposed, although Urban VIII, considering the honor given to him in many lives and miracles, did not legitimately forbid, and indeed, deduced that he had ordered Bishops not to allow the publication of any Servant of God who possessed an altar, unless with the title of Blessed or Saint, and that if it was published, it should be done according to this decree. Thus, for example, the Sacred Congregation [Sacra Congregatio] ordered in a particular case: "Write to the Archbishop of Neapolitan, that by a public edict, copies of the miracles of Sister Ursula Benincasa be printed, and that he should prohibit the printing of this with the title of Blessed, and that he should diligently prevent any common authors from publishing it in the life and in the Kingdom of Sicily, and that he should proceed with the publication and 23 June 1648." Benedict XIV, lib. 2, chap. 12, no. 3. After these things, the Advocate responded and refuted what had been particularly presented by the Promoter of the Faith in order to weaken the force of these documents or monuments. Regarding the final observation concerning the existing cult, the Advocate first responded that no decree could be found in law which prescribed that, in order to confirm the cult of a Servant of God, it was necessary for that cult to be widespread among all peoples, but that it was sufficient for it to be observed among some groups of the faithful, with the knowledge and without opposition of ecclesiastical authority. But furthermore, it cannot be said that it is entirely

Translated by churchlatin.ai, a product of Boyne Archives

unknown to the people and the clergy, to whom the Bishops of Budvice and Linz have given credit, that the memory of Blessed Eugene has been widely disseminated; for the witness also said that this must have been said by the witness from Budvice, who in his examination asserted, "In the church of Altovanden, I have seen that Blessed Eugene III is venerated along with St. Bernard, and the local Ordinaries are present and do not contradict it," and that witness finally added: "Furthermore, since it clearly appears from the aforementioned document that a public and ecclesiastical cult has been offered to Blessed Eugene III from time immemorial, we cannot but add further prayers that Holiness [His Holiness] may also grant to the same Blessed Eugene III..."

[*Latin ed. p. 122*]

"Regarding the 122nd cause concerning the cult of Blessed Eugene III, it pleases [the Sacred Congregation] to deem it worthy and to confirm it with its supreme authority." And if it should happen that Blessed Eugene is, perhaps, unknown among the clergy and people of the aforementioned dioceses, this cannot be said of the diocese of Pisa, whose clergy and people, and even the Archbishop himself, Most Reverend and Most Reverend Monsignor, have fostered and affirmed the cult. Finally, it is necessary to explain why one witness, from the Cistercian family, stated that a true ecclesiastical cult, strictly accepted, had never been rendered to Eugene within the Cistercian Order. The witness himself provided the explanation: "I note that positive indications have been given that in our Order, there was never a 'Responsorium in laudem huius Beati,' nor was the Divine Office understood concerning this cult; no Mass was celebrated, truly a cult hitherto proven, which, indeed, I myself had confirmed through the constant reading of the Menology in the refectories or Chapters of the Cistercian Order, concerning Blessed Eugene III; on that day, the octave of June, from images of the saints decorated with the insignia of Eugene, which are displayed in the monasteries, and in the temples above the altars, among other saints; from the acceptance of the name Eugene by monks and nuns as if he were a patron when they receive the monastic habit. Considering these and other things, the question is posed: "Whether the judgment rendered by the Most Eminent and Most Reverend Cardinal, Vicar of the City [of Rome], as Ordinary judge, concerning the aforementioned memorable cult of the Servant of God, or concerning the exception from the Decrees of Pope Urban VIII, should be confirmed in the case and for the matter under consideration."

RESOLUTION. The Congregation of Rites, having duly examined the cause, on September 28, 1872, decided to respond affirmatively; this Resolution was ratified and approved by the Most Holy Father on October 3 of the same year, and, according to custom, a Decree was issued, which is

Translated by churchlatin.ai, a product of Boyne Archives

given below.

[*Latin ed. p. 123*]

Regarding the causes, meanwhile, concerning the Beatitude of Eugenius III, I gather the following:

I. When it is a question of an exceptional case in the Decrees of Urban VIII, concerning the recognition of the ancient public cult of a Servant of God, with the cult's origin proven, and its continuation in the *centenaria* epoch preceding the Urbanian Decrees, if documents or monuments are lacking to demonstrate the continuation during the intervening period, these are to be presumed, provided that nothing serious stands in the way.

II. Such a presumption arises from the very fact of the continued possession of time, as considered in the Decrees of Urban VIII.

III. Therefore, although documents or monuments of the 13th and 14th centuries may still be lacking, this cannot prevent the consideration of the cause of Eugenius III; indeed, it may even render it more valid. Once the origin of the cult is proven, it is of no consequence whether it persevered among many peoples, or among only a certain group of the faithful: for whenever it is established that the cult was public in a place, and that it was observed and not contradicted by ecclesiastical authority, this constitutes the utmost sufficiency for forming a judgment regarding the recognition of the cult.

V. The name of a public cult in such cases does not arise solely from the exercise of liturgical worship (although this itself is an argument for public worship), but from public signs which indicate that a certain Servant of God was considered and held to be such without contradiction, in the census of the Saints or Blesseds whom the Church venerates.

VI. In the cause of Eugenius, all of these things have been demonstrated, so that from the beginning he was called and considered as Blessed or Saint, especially in Rome and among the Cistercian Order, and among the same Order, this kind of worship has peacefully continued until the present day.

VII. What effect such an authentic recognition of a cult has on other matters: compare the cause of Urban V in Volume V, and what I noted there on page 437.

[*Latin ed. p. 124*]

124 Concerning the Cause of Blessed Eugene III: The decree issued concerning this matter reads as follows: DECREE. "Eugene, of this name, III, formerly called Bernard, was born in the territory of Pisa, of the Paganelli family. After completing his adolescence, he devoted himself to the clerical life, and, having been initiated into the priesthood, he distinguished himself through his excellent qualities and was chosen among the canons of the Metropolitan Church of Pisa. Meanwhile, burning with a fervent desire to serve God more zealously, he resolved to despise earthly things

Translated by churchlatin.ai, a product of Boyne Archives

and to seek only heavenly things. When Saint Bernard came to Pisa in the year 1134, inspired by the example of this most excellent man, he requested to become a member of the Cistercian Order. Having made his vows, he put on the monastic habit in the monastery of Clairvaux. Accepted by the Holy Master because of his regular observance and his virtue, he was first appointed prefect of the monastery of Farfa, and then, by Pope Innocent II, he was chosen as the abbot of the monastery of Saints Vincent and Anastasius, located outside the city, near the Baths of Aquas. He had become so renowned for his sanctity and prudence in the discharge of the duties entrusted to him that, after the death of Pope Lucius II, the Cardinals, assembled in a general council to elect a Pope, found no abbot more worthy to be raised to such a high office than Bernard. Therefore, with all the votes, he was elected Pope, and he took the name Eugene III. He began his pontificate in difficult times, for the most audacious enemies were striving to completely overthrow the principality of the Roman Church, and therefore he was forced to leave the city more than once; but, after driving out the troublemakers, he returned to it with great honor and the congratulations of all good men. Meanwhile, while the disturbances among the people were raging, he resided in Viterbo, where he received the legates from England, Scotland, Germany, Spain, and France, who had come there to offer obedience and submission to the new Prince of Pastors. Also, some Armenian bishops were present, professing obedience and submission in the name of their metropolis and their people, and inquiring about his opinion on several matters concerning the Eastern Church. Having gone to France, he held councils in Rheims and Troyes, in which he condemned the errors of Eon and Gilbert Porretan, and he enacted several decrees to restore the discipline of the clergy and to defend the freedom of the Church. He made the people of Sweden and Norway more observant of the Catholic faith through Cardinal Nicholas Breakspear, the Apostolic Legate, and he granted them new ecclesiastical rights, including the right to petition for an Indult to celebrate the Office and the Mass according to their own rite, which has been approved by the Holy See, as you have in Volume VI, page 126, for Urban V. Furthermore, those who celebrate the Office and the Mass of the Roman Pontiffs may hope to obtain an Indult, if they petition for it, to celebrate the Office and the Mass of Blessed Eugene III, after it has been approved; which Indult the Roman clergy will certainly soon request."

[*Latin ed. p. 125*]

During the pontificate of Blessed Eugene III, one hundred and twenty-five metropolitan sees were established. Departing from Gallia, he visited both the Claresian and Cistercian monasteries, together with Saint Bernard, leaving behind admirable examples of holy conversation for the monks, who were once his confreres. Returning to Italiam, he sought the salutary advice of Saint Bernard, by which he might rightly administer the Church

Translated by churchlatin.ai, a product of Boyne Archives

and safeguard the rights of the Apostolic See. He received from him a precious book, *De Consideratione*, in which the duties and obligations of Popes and Princes are set forth. He endeavored to restrain the audacity of the Saracens by enlisting the aid of Christian Princes. He was an outstanding scholar, and he reformed the studies of Theology and Jurisprudence, and, in order to encourage the minds of the students, he established academic degrees, by which they might more eagerly acquire knowledge. Promoting peace, he began to reconcile the discord between the citizens of Pisa and Lucenses. He loved the beauty of the House of God, and therefore he adorned the Liberian Basilica with more beautiful decorations, and he either repaired or enriched with precious gifts many churches. He presented as an example to the rulers of this world, a most pious Emperor, Henry, whom he enrolled among the Saints, so that they might have before their eyes the proper governance of peoples and the defense of the Catholic faith. Finally, after affairs had been settled, while he was at Tibur, having come from Romam to escape the summer heat, he was struck by a grave illness and peacefully passed away on the eighth of July, in the year 1213, after having sat upon the Chair of Peter for eight years and four months. His body, amidst the tears of widows and the poor, in whose hands he had, while he lived, laid up heavenly treasures, was carried to Romam and, with solemn funeral rites lasting for two days, beyond the usual custom, was placed in the Basilica Vaticana, together with the relics of Saint Gregory III and Blessed Peter the Deacon. Many miracles thereafter rendered the tomb of Eugene III glorious to God, by which the faithful were moved to publicly venerate him. Since this cult had also persisted in other regions until this time, the Most Reverend Father Theobald, the Abbot General of the entire Cistercian Order, petitioned the Apostolic See to confirm him, on behalf of himself and the Cistercians. To this end, the Cardinal Prefect of the Congregation of Sacred Rites, and the Most Reverend Urban, Vicar of the Most Holy Lord Pope Pius IX in Romam, instituted a process with ordinary authority, and, after it was completed, pronounced a judgment in which he declared: That public ecclesiastical worship had been rendered to this Eugene III from time immemorial. Afterwards, this cause was brought before the examination of the Congregation of Sacred Rites, and, on the day designated, in the Vatican buildings, in the meeting of the Ordinary of the same Sacred Congregation, by the Most Reverend and Most Illustrious Cardinal Aloysius Billio, the judge of this cause, the following question was proposed: ”Whether the judgment pronounced by the Most Reverend and Most Illustrious Cardinal, the Vicar of Romam, as Ordinary Judge, concerning the aforementioned worship rendered to the Servant of God, or concerning the exception from the decrees of the Most Holy Pope Urban VIII, should be confirmed in this case and for the purpose of which it is

Translated by churchlatin.ai, a product of Boyne Archives

treated?"

[*Latin ed. p. 126*]

Regarding cause number 126 of the Blessed Eugene III, the Sacred Congregation, after mature deliberation and having heard the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, decided to respond with: "Affirmative." On the 28th of September, 1772. These matters, faithfully reported to His Most Holy Lord Pope Pius IX through the undersigned Secretary, were ratified and confirmed by His Holiness. On the 3rd of October of the same year. C. Episc. Ostien. et Velitern. Cardinal PATRIZI, S. R. C., Prefect. D. Bartolini, S. R. C., Secretary.

NEAPLES. CONFIRMATION OF THE CULT RENDERED TO GOD, FROM TIME IMMEMORIAL, TO THE MOST HOLY BISHOP OF NAPLES, DEDICATED TO THE SAINTS.

In the series of causes of the Servants of God, the present cause is one of those that has undergone unfortunate vicissitudes, yet has been saved from shipwreck. It should not be thought that all the causes of the Servants of God which are presented to the Sacred Congregation of Rites will easily obtain a favorable outcome; something that might occur to someone, seeing that we report many favorable decrees. It often happens that causes which seem the best, suffer shipwreck, and that for reasons which may seem of little importance. This demonstrates how cautiously one proceeds in the causes of the Servants of God. The vicissitudes that this cause has undergone can be understood from the decree that follows, which I will explain more fully below, by which it finally achieved victory.

[*Latin ed. p. 127*]

Of the Most Reverend Bishop of Naples, 127 Naples. The Cult of Confirmation, from time immemorial, has been offered to the Servant of God, the Most Reverend Bishop of Naples, now Saint. DECREE. "Since My Most Eminent Cardinal Philip Giudice Caracciolo, Archbishop of Naples, considered that he could demonstrate with valid proofs that public and ecclesiastical cult had been offered to the Servant of God, the Most Reverend Bishop of Naples, before the hundred years required by the decrees of His Holiness Urban VIII, and that this cult was validly established by legitimate prescription and uninterrupted possession, he requested that the following question be proposed in the Ordinary Congregation of the Sacred Congregation of Rites, held on September 12, 1840: Whether it is established that public and ecclesiastical cult has been offered from time immemorial to the aforementioned Servant of God, or whether this is an exception to the decrees of His Holiness Urban VIII? However, this matter did not prosper, as was entirely evident when, in the year 1859, the Most Reverend and Most Excellent Lord Cardinal Xystus Riario Sforza, Archbishop of Naples, obtained that it be proposed again. But, after a more diligent

Translated by churchlatin.ai, a product of Boyne Archives

investigation of documents, the same Most Eminent Cardinal Archbishop found that the principal obstacle that had prevented the cause from being happily concluded had been removed, and therefore he humbly implored His Most Holy Father, Pope Pius IX, to grant him the opportunity to have this cause undergo a third examination before the Sacred Congregation of Rites; but he requested that the arguments drawn up by the Reverend Father D. S. Fidei Promotor be reconsidered in a special congregation of the same Sacred Congregation, in which the judgment would be rendered, given the particular circumstances present in the case. "When His Holiness benignly acceded to these requests, at the urging of the aforementioned Reverend Orator Archbishop, in the aforementioned special congregation, held today at the Vatican, the following question was proposed by me, the undersigned Secretary of the Sacred Congregation of Rites: Whether it is established that public and ecclesiastical cult has been offered from time immemorial to the Servant of God, the Most Reverend Bishop of Naples, or whether this is an exception to the decrees of His Holiness Urban VIII, Pope? Furthermore, the same Sacred Congregation, after hearing the written opinion of the Reverend Father Peter Minetti, S.F., Fidei Promotor, after mature deliberation and examination of all matters, decided to write: "Considering the newly presented arguments, it is to be consulted with His Holiness that he deign to approve the cult offered from time immemorial to the Servant of God, the Most Reverend Bishop of Naples. June 10, 1872. "Afterward, a faithful report of the foregoing was made to His Most Holy Father, Pope Pius IX, by the undersigned Secretary, and His Holiness, considering the judgment of the aforementioned Sacred Congregation to be sound, confirmed it.

[*Latin ed. p. 128*]

Concerning the Most Blessed Bishop of Naples: From time immemorial, the Most Blessed Bishop of Naples, now called Saint Maximo, has been honored with public and ecclesiastical worship. On the 13th of the same month and year, Cardinal Patrizi, Bishop of Ostia and Velletri, and Prefect of the Sacred Congregation, and D. Bartolini, Secretary of the Sacred Congregation, declared: "The cause, therefore, was proposed on September 12th of the year 1840, along with another case entirely similar, that of Saint Fortunatus, also a Bishop of Naples. And the Sacred Congregation, since both cases were supported by identical documents and evidence, gave a response concerning both, stating that the cases were exempt. However, on the 25th of the same month, in a report by the Most Reverend Gregory XVI, this decision of the Sacred Congregation was confirmed with regard to Saint Fortunatus; but with regard to Maximo, the Roman Pontiff hesitated, due to a certain objection raised, which, however, was extraneous to the worship itself; and he neither approved nor disapproved of the decision, but on January 15th, 1841, he responded: "Let him enjoy the worship with

Translated by churchlatin.ai, a product of Boyne Archives

which he enjoys." The cause was again proposed on June 6th of the year 1853, but, it seems, due to certain circumstances entirely foreign and external to the Holy See, the Congregation still considered it prudent to maintain the worship, as stated in the response of Gregory XVI. Now, the cause having been fully resumed, with new documents presented, and after the most careful examination, it has been fully vindicated. In order that such judicial vicissitudes may not seem to diminish the splendor of the cause of the Servant of God, I will briefly explain what it was that dispelled the shadows. In the initial proposal of the cause, the Promoter of the Faith raised the following objection: "Now let us speak of the testimonies. The oldest of these is that which is reported by the Bollandists, namely, the writings of Faustinus and Marcellinus. These authors are noted by the Bollandists themselves to be most mendacious. Indeed, it is clear that no praise should be given to those who are excommunicated from the Catholic Church."

[*Latin ed. p. 129*]

Regarding the Most Blessed Bishop of Naples, 129. In this matter, the opinion of Baronius moves me not a little, an opinion which is also followed by Chioccarellius, as the Bollandists report (for the day of June 12, page 318, number 6). For these authors interpret the words of Faustinus and Marcellinus in a different way, and they believe that there were two Bishops named Maximus in Naples, who were not very different from each other, and that one of them was a heretic, which is rather scandalous. Amidst these uncertainties, it could be that the most learned and virtuous men have confused one with the other, and have praised one with the praises due to the one who favored heresy. Indeed, Lucifer himself is extolled by them, who even excluded penitents from Communion, Bolland., ibid., page 317. Therefore, care must be taken, lest in our case what happened in the Greek menology, adorned by Basil the Macedonian, occur, where many who were schismatics are celebrated as Saints, as Macrius notes in the Hierolexicon, under the word "Menology." This objection, raised with due diligence, has been overcome through discussion, and it is fully established that the cult was rendered to the Bishop Maximus from a time immemorable. What was still desired was to place the matter in fuller light, namely, whether one or two Bishops were named Maximus in the Neapolitan see, and whether, if there were two, one of them was a heretic, according to the words of Baronius. Therefore, the words of Baronius had to be examined, and the foundation of those words had to be investigated. This has been fully accomplished in this new presentation of the case. For a most learned dissertation has been prepared by the Neapolitan priest Anthony Trama, in which he demonstrates, with a series of arguments illuminated by the bright light of reason, that there was only one Bishop named Maximus in the Neapolitan see; and that the words of Baronius manifestly contain a typographical error or a mistake in writing, which Baronius himself did not

Translated by churchlatin.ai, a product of Boyne Archives

notice. After these things, having carefully considered the matter, it is clear that there is no doubt that the same judgment applies. Indeed, Baronius, in the year 336, numbers 60 and 61, whatever he states about the Bishop Maximus, took from the testimony of Marcellinus, *Acta*, volume VII, page LXXIV, number 9.

[*Latin ed. p. 130*]

130 Concerning Blessed Maximus, the Bishop of Neapoli, and Faustinus, who were addicted to the Luciferian sect, in the year 383 or 384, they wrote a document of prayers to the Emperors Valentinian, Theodosius, and Archadius; in this document, they attempted to slander the saints Damasus, Hilary, and others, insinuating that communion should not be given to Arian heretics who had already renounced their heresy, citing, to make their point, examples of saints who, rather than communicating with Arian heretics, steadfastly suffered persecution. For this reason, they cited the example of Maximus, although he did not appear to be the originator of the Luciferian sect, writing: "Maximus also, from Neapoli in Campania, because he was of an infirm constitution and a delicate body, was, at first, afflicted by injuries for a long time; then, when, because of the constancy of his mind and the virtue of his faith, bodily weakness was not overcome, he was led to his death and there he found rest in the peace of the Lord. But in this matter, recognize the divine judgment, as is proven by the present documents. The holy man Maximus, defending the faith, rightly condemning communion with heretics, was led into exile. In his place, the transgressors appointed a certain Zosimus, who himself, at first, defended the Catholic faith. This occurred in the city of Neapoli in Campania. This was known to Saint Maximus, and, writing from exile, he pronounced judgment upon him, not only with episcopal authority, but also with the emulation and virtue of martyrdom, for the glory of God. But after a few years, Blessed Lucifer, coming from Quarten in exile to Rome, entered Neapoli in Campania; to whom Zosimus attempted to approach, perhaps with that very confidence with which he now seemed to have been corrected from impiety. But Lucifer, the confessor, refused to receive him, not being ignorant of what he had done; indeed, with the fervor of the Holy Spirit, the bishop and martyr more firmly carried out his judgment, saying that he himself would not have the episcopate, which he claims for himself as an adulterer, by the special judgment of God, and thus he would also feel the punishment of his impiety. But not long after, the same Zosimus, when he wished to perform the duties of a priest in the midst of the people, while uttering priestly words, his tongue protruded..." We do not recount ancient matters.

[*Latin ed. p. 131*]

Concerning the Most Blessed Bishop of Naples, it often happens that certain matters come into question; for Zosimus is still alive today, and

Translated by churchlatin.ai, a product of Boyne Archives

has not lost the use of his tongue, after having preferred to live without the office of Bishop, grieving over his own wickedness. From this single testimony, the entire history of Maximus, Zosimus, and *Luci* has been derived by Papebrochius, Henschenius, Baronius, and other ecclesiastical writers, who do not fail to add full faith to the historical accounts of contemporary events, unless they are attempting to pervert them for their own wicked purposes. Therefore, Baronius wrote the following in the year 1142, numbers 60 and 61: "From Rimini, where the council was held, the tragedy began for those Bishops who, for just reasons, had not come to the Synod, and who were, in various places, troubled by Valens, who had been sent to them as a legate to compel them to subscribe to the impiety of Rimini; those who refused were, indeed, punished with exile, and even with other penalties. Among others, the Most Blessed Bishop Maximus of Naples in Campania, was entirely unwilling to do so, although he was suffering from a severe illness, but he was nevertheless compelled to endure a harsh exile; and, not remitting his priestly vigor for that reason, he pronounced the sentence of anathema against Zosimus, who had taken his place, by the Arians: which, by the just judgment of God, did not go unpunished, but struck down the invader of the alien See, so that it might serve as an example to others of contempt for the divine, of rashness in faith, and of presumptuous audacity. For, as Marcellinus states, from that time, when he wished to perform ecclesiastical functions before a gathered people, even within the church itself (he says), the words of his priestly tongue are extended..." This is what Marcellinus says. And following this, in the year 1142, number 21c, Baronius likewise assumed: "But now let us observe *Luci* departing and returning to Italy. From these things which are written about him by Marcellinus the Presbyter and schismatic, the Luciferian sect is clearly understood to have come to Rome, and to have been condemned by those with whom he had previously been united, the Arians; so that, when he was in Naples,..."

[*Latin ed. p. 132*]

132 Concerning the Blessed Maximus, Bishop of Neapolitana, avoiding communion with Maximus, who had been appointed in the place of Zosimus. These are the last words of Baronius, avoiding communion with Maximus, who had been appointed in the place of Zosimus (which, upon closer examination, reveals a transposition of names, as will be shown above). It should be read as: "communion with Zosimus, who succeeded Maximus," leading to the opinion that there were two Maximuses, bishops, of whom the first was the Saint, and the second, who succeeded Zosimus, was a heretic. This opinion was attributed not only to Chioccarellius, but also, it seems, to the Bollandist writer (on June 2, volume 2, page 517 and following), who reproached him for it. This writer indeed defends that, as has been discovered from history, Severus succeeded after Zosimus in

Translated by churchlatin.ai, a product of Boyne Archives

the see of Neapolitana. And since some authors, such as John the Deacon in the Chronotax of the Bishops of Neapoli, the Bollandist writer states, "I do not see why Ursicinius cannot be placed in the middle, resolving the disagreement: 'I, Zosimus,' truly ceded the see, 'vacant,' and was to be sent to Roma; Ursicinius was to be designated, who either was not received by the Neapolitans who were demanding Severus, or refused to go to Neapoli...' Nevertheless, no bishop of Neapolitana of a true name is placed between St. Maximus and Severus. And concerning the authority of the testimony of Marcellinus, the same Bollandist continues: "The most certain and ancient testimony of the martyrdom, suffered in a grievous exile for the faith by St. Maximus, Bishop of Neapolitana, is given by two mendacious, contemporary writers; and while seeking to defend their schism, they defend the truth under the veil of falsehood itself, not of complete falsehood. I speak of Faustinus and Marcellinus, presbyters, in their calumnious book against St. Damasus, they quote to Emperor Theodosius these words [he quotes the text of the book, and then adds]." These men, constantly twisting this very miracle to confirm their schism, predicted the punishment of Zosimus, not because...

[*Latin ed. p. 133*]

Concerning "after the lapse," the Most Reverend Bishop of Cattolica persevered in holding the Neapolitan episcopatus for 133 years under the title "of penance," but because the sin of adultery occupied him even while he was still "St. Maximo ordained." However, Baronius wrote thus: "Baronius, having understood the relationship between Marcellinus and Faustinus differently, states that 'Zosimo favored one, and the other, Maximo, was also ordained by the Arians, whose communion Lucifer opposed.'" Having stated these things, which reveal what was obscurely indicated by the Promotor of the Faith in the initial proposition of the cause, he reasoned thus in the officially prepared argument. To admit the hypothesis of two Maximuses so different from each other, if anyone wished, would not in any way contradict the cause. For it is a matter of worship that, from time immemorial, in the church of Cattolica, not to any Maximo infected with the Arian heresy and schismatic, but, as the documents previously presented show, to the legitimate Maximo, defender of the Catholic faith, and constant witness to the martyrdom of Christ. Clearly, this Maximo is admitted by Baronius, and is highly praised, not only in the cited text from the year 330, but also in the notes to the Roman Martyrology for April 30, where, speaking of St. Severus, the Antistite of Cattolica, and deviating from the usual testimony of Marcellinus, he adds: "Before Severus, Maximo, the most outstanding Bishop of Catholic faith, sat there, who, when resisting the perfidy of the Arians, was exiled after the council of Rimini. Marcellinus the Presbyter writes wonderful things about him. But furthermore, Maximo is false; the observation that the hypothesis of two is

Translated by churchlatin.ai, a product of Boyne Archives

false, because in the series of Bishops of Cattolica, no schismatic Maximo is found; that Maximo, rejected by Lucifer, about whom in the cited text of the Annals for the year 362, openly contradicts the account of Marcellinus, from which Baronius derives and constructs the entire history. Indeed, whatever he recounts about Maximo and Zosimo, he confesses to having borrowed from the book of Marcellinus. Since, therefore, in the book of Marcellinus, neither a vow nor a word is found about Maximo, but certainly about Zosimo, rejected by Lucifer, in order not to misrepresent the intention of Baronius, his text should be read in this way..."

[*Latin ed. p. 134*]

You are compelled to demand from Maximus, the Neapolitan Bishop, a narration concerning Marcellinus. Avoiding the very words of Baronius, who, as Maximus had taken the place of Zosimus, presents the man named Maximus as infected with the Arian heresy and a schismatic, while presenting the Bishop named Zosimus as a legitimate and orthodox Bishop, which, most certainly, Baronius did not wish to reveal concerning the true Zosimus, who was an intruder. Therefore, contrary to the author's intention, a clear inversion of names has occurred. But after having examined everything in this matter, in the first autograph of the Annals, written by the author's own hand, which is preserved in the Vallicellian Library, volume j, page 41, in a marginal note, inserted in the designated place in the text, also in his own handwriting, the following is read concerning what Lucifer wrote in the book of the schismatic priests: "Marcellinus, a priest, and himself a Luciferian, who recounts the events of Lucifer, writes that, returning from the East, he came to Rome, and then proceeded to Naples: where, while there, he refused to communicate with Zosimus, the Bishop of that city, because there, Maximus, a Catholic, had been expelled, and Arianus had been installed in his place." This same annotation, although not in exactly the same words, was subsequently inserted by Baronius in his second manuscript, also written in his own handwriting, which exists in the Vatican Library in the Annals. Furthermore, in the edition that followed, printed by the press, this inversion of names, about which we are speaking, occurred, avoiding any mention of Maximus, who had taken the place of Zosimus. Therefore, since this inversion of names clearly occurred contrary to Baronius's intention, there was nothing more that could hinder the most excellent cause of St. Maximus.

FROM WHICH YOU MAY GATHER: I. When it is a question of constant traditions of the Churches, it is futile to raise doubts with conjectures and indications sought from external sources: for these traditions, possessing their own arguments that demonstrate the constancy of the tradition, can

Translated by churchlatin.ai, a product of Boyne Archives

have no other basis than the publicly known truth.

[*Latin ed. p. 135*]

Decree II. 135. Wherefore, if it should be necessary, history must be corrected according to such firm traditions, and not the other way around; although, when it is a matter of a judgment to be rendered by the Holy See, no precaution should be considered superfluous. Malacitana, or Hispalis. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Didacus Joseph of Gadis, a professed priest of the Order of Friars Minor of Saint Francis, Capuchin. DECREE. "In the cause of beatification and canonization of the aforementioned Venerable Servant of God, Didacus Joseph of Gadis, it was necessary to deliberate in the Ordinary Congregation of Sacred Rites concerning the validity of all the processes instituted in this cause, at the request of the Reverend Father, Father Joseph of Lierna, a professed priest of the Order of Friars Minor of Saint Francis, Capuchin, and Postulator of this cause; Our Most Reverend and Eminent Cardinal Hannibal Capalti, Promoter of this cause, proposed the following question in the Ordinary Congregations of Sacred Rites held today in the Vatican: Does it pertain to the validity of the processes, whether instituted by Apostolic or Ordinary authority, that the witnesses be rightly and properly examined, and that the testimonies produced be legitimately obtained, in the case and for the purpose in question? The Reverend Fathers, entrusted with the safeguarding of the sacred rites, after a careful examination of all matters, and after hearing the Reverend Father, Peter Minetti, of the Most Holy Faith, judged it fitting to respond: Affirmative. March 2, 1872. "These matters having been faithfully reported to Our Most Holy Lord Pope Pius IX by the undersigned Secretary of the Congregation of Sacred Rites, His Holiness deigned to ratify and confirm the judgment of the Holy Congregation. March 7, 1872." C. Cardinal Patrizi, Bishop of Ostia and Velletri, Prefect of the Holy Roman Church. L. S. D. Bartolini, Secretary of the Holy Roman Church. Rome, or Setia. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Charles of Setia, a lay brother of the Order of Friars Minor of Saint Francis, Reform. Concerning a question and concerning which miracles are established in the case, and for the purpose in question? DECREE. "Although the Venerable Charles of Setia, a Franciscan lay brother, was taken from this world two centuries ago, nevertheless, the most wise plan of God decreed that..."

[*Latin ed. p. 136*]

Decrees were elevated to 136. For now, wicked men, having entered into a pact with the power of darkness, wage a most savage war against the Lord and His Church, so that the name of God may no longer be remembered, and they may possess His Sanctuary by inheritance. Meanwhile, the most select members of the Church, feigning piety, intend to destroy and scatter

Translated by churchlatin.ai, a product of Boyne Archives

the Sacred Order and the Regular Families with good works. To achieve this more easily, they spread the most shameful calumnies about their lives among the people, so that they may be held in contempt by all. But God, who is accustomed to apply the proper remedy in due season, to confound their perfidy, raised up from the dung this poor son of the Seraphic Francis, and endowed him with heavenly gifts. After his death, the extraordinary sanctity of the Venerable Charles was also confirmed by the testimony of miracles. Two of these were presented for examination once, then again, and a third time, to the most serious inquiry of the Congregation of Sacred Rites, namely, in the Preliminary Meeting held in the halls of the Most Reverend Cardinal, Most Reverend Lewis Altieri, then Relator of the Cause, on the eleventh day before the Kalends of March in the year 1867; then in the Preparatory Council of the Most Reverend Cardinals presiding over the Sacred Rites, held in the Apostolic Palace at the Vatican on the nineteenth day before the Kalends of February in the year 1868; and finally, in the General Assembly before His Holiness our Lord Pope Pius IX on the third day before the Kalends of August of the following year, in which the Most Reverend Cardinal John Baptist Pitra, Relator of the Cause, proposed the question: "Whether, and concerning which miracles, it is established in the case and for the effect of which we are speaking?" Then the Consultors, and then the Most Reverend Fathers Cardinals, gave their affirmative opinion. After the votes were counted, His Holiness did not immediately reveal his mind, but offered prayers to obtain light from the Father of Lights. "Finally, he decided to pronounce his judgment on this day of the Assumption of the Blessed Virgin. Therefore, after having offered the Holy Sacrifice with the utmost devotion in the Chapel of the Xystus Palace in the Apostolic Palace at the Vatican, he summoned to him the Most Reverend Cardinal John Baptist Pitra, Relator of the Cause, together with the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, and me, the undersigned Secretary, and in their presence, he declared: 'It is established that there are two miracles of the Venerable Servant of God, Charles of Seati, namely, the prodigious sign that appeared on the left side of the Venerable Servant of God after his death, and the instantaneous and perfect healing of Angela Marzolini from a cancerous ulcer of the uterus.' He ordered that this decree be made public and recorded in the Acts of the Congregation of Sacred Rites. On the eighteenth day before the Kalends of September in the year 1872." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. D. Bartolini, Secretary of the Sacred Congregation.

[*Latin ed. p. 137*]

Decree 137 of Rome, or Alba. Concerning the Beatification and Canonization of the Venerable Servant of God, Gaspar Del Bufalo, Canon of the Basilica of Saint Mark in the City, and Founder of the Congregation of the Precious Blood of Our Lord Jesus Christ. DECREE. "By particular letters,

Translated by churchlatin.ai, a product of Boyne Archives

this Congregation of Holy Rites ordered that numerous Roman Ordinaries, especially those of the Pontifical States and the Kingdom of Naples, diligently investigate all and each writing, letters, and other documents pertaining to the aforementioned Venerable Servant of God, within the dioceses entrusted to them, according to the instructions of the Most Reverend Promoter of the Holy Faith, which were attached to the aforementioned letters. These Roman Ordinaries most religiously obeyed this mandate, and instituted investigations within their respective dioceses for this purpose: and all the writings that were discovered through these efforts were transmitted to this very Congregation of Holy Rites, and many of them also appended authentic records of the investigations carried out. Therefore, all the writings discovered and legitimately produced are (which follow in a catalog, arranged in series, distinguished individually, for 100 pages). "Now, since the undersigned Cardinal, Prefect of the Congregation of Holy Rites, and introducer of this cause, proposed a question regarding the revision of the writings pertaining to the Venerable Servant of God, in the ordinary assembly of the same Sacred Congregation, held on the date indicated, at the Vatican Palace, and reported that the appointed Censors had found nothing in the writings themselves that could hinder the further prosecution of this cause; Therefore, after mature and careful deliberation, and after hearing the voice and written opinion of the Most Reverend Father Peter Minetti, Promoter of the Holy Faith, the Reverend Fathers entrusted with safeguarding the sacred rites judged it fitting to write: "That nothing stands in the way of proceeding further, with the reservation of objections to be presented to the Promoter of the Faith, if and to the extent that it is legally permissible." Dated March 5, 1870. "Concerning all of the above, a faithful report was subsequently made to His Holiness, Pope Pius IX, by the undersigned Substitute of the Secretariat of the aforementioned Congregation, and His Holiness benignly approved, and approved and confirmed the Decree of the Sacred Congregation. Dated the 10th of the same month and year. This present Decree was issued on this day, September 9, 1872. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of L.&S., of the Sacred Roman College. For the Most Reverend Father Dominic Bartolini, Secretary. Joseph Ciccolini, Substitute."

[*Latin ed. p. 138*]

138 Decrees of Annecy. The cult of the Servant of God Peter Faber, a professed priest of the Society of Jesus, and the first companion of Saint Ignatius of Loyola, now Blessed, has been instituted. DECREE. "In the town of Villaret, in the diocese formerly of Geneva, Peter Faber, another of those apostolic men who illuminated the beginnings of the Society of Jesus, first breathed the air of life. From his earliest years devoted to the care of souls in his homeland, he was always the first of those companions who joined Ignatius of Loyola in the Parisian Academy, striving for a more perfect

Translated by churchlatin.ai, a product of Boyne Archives

way of life; the first who, by the order of Pope Paul III, went to Germany, where he bravely defended the dogmas of the Catholic faith and the divine authority of the Church, both with his words and with the strength of his spirit. He traveled through almost all the provinces of Belgium, Spain, and Portugal, gathering abundant fruits in the cultivation of the Order of the Discalced Carmelites, and everywhere guarding against the ravages of errors. Finally, after a short life, having filled many years, on August 1st of the year of the restored faith 1546, he peacefully passed away in Rome, at the age of forty, although he had previously, out of obedience, yielded to the demands of his failing health and labors. He left behind such a legacy of sanctity that, as is known, he was illuminated by God with signs and miracles, and his devotion and ecclesiastical veneration began immediately in his homeland. Hence, in Villaret, in the very place where Peter Faber saw the light, a public chapel was canonically erected shortly after his blessed death, where the cult was first offered to him with clear significance, and has persisted in its full vigor to this day. To these things were added not only the tolerance or consent of the local ordinaries, but also the testimony and authority of the Saints Francis Xavier and Francis Borgia, and above all, of the Most Holy Bishop of Geneva, Saint Francis de Sales, who not only expressed in his writings a most excellent opinion of the sanctity of Peter Faber, but also greatly promoted his public cult. "Based on these numerous and weighty documents, at the urgent request of the Reverend Father Joseph Boero, a professed priest and General Postulator for the causes of beatification and canonization of the Servants of God of the aforementioned Society of Jesus, a legal inquiry was recently completed by the Most Reverend Bishop of Annecy, under whose jurisdiction the town of Villaret now falls, and a proper judgment was pronounced on the case, in accordance with the prescriptions of the General Decrees. Therefore, all matters were transmitted to the Sacred Congregation for Sacred Rites, at the urgent request of the aforementioned Reverend Bishop and clergy of Annecy, as well as of the aforementioned Postulator, and of the entire Society of Jesus. The Cardinal below, Prefect of the aforementioned Sacred Congregation and Relator in this cause, has signed."

[*Latin ed. p. 139*]

Decrees from the meeting of 139 Cardinals, held today in Vatican, proposed the following question: Whether the sentence issued by the Bishop of Annecy concerning the cult rendered to the aforementioned Servant of God, or concerning the exception from the decrees of the Most Holy Urban VIII, should be confirmed in this case, and to the effect of what is being considered? Furthermore, the Eminent and Reverend Fathers entrusted with safeguarding the sacred rites, after carefully examining all the matters presented individually and together, and after hearing the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, judged it

Translated by churchlatin.ai, a product of Boyne Archives

fitting to respond as follows: Having considered all matters, it is established that there is an exception from the decrees of the Most Holy Urban VIII. August 31, 1872. "Concerning all of the above, a report was subsequently made by the undersigned Substitute of the Congregation for Sacred Rites to the Most Holy Pope Pius IX, and His Holiness approved the decree of the Sacred Congregation, confirming the public and ecclesiastical cult of Blessed Peter Faber, Confessor. September 5, in the same year. C. Cardinal Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. S. For the Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute. Concerning the Beatification and Canonization of the Venerable Servant of God, Benignus Joly, Canon of the Church of Saint Stephen in the city of Dijon. DECREE. "On the sixteenth day before October in the year 1869, when the Most Holy Pope Pius IX graciously ordered that the doubt presented by the Commission for the Introduction of the Cause of the aforementioned Servant of God, Benignus Joly, be considered in an Ordinary Congregation of Sacred Rites without the intervention or vote of consultants, although less than ten years had elapsed since the presentation of the Ordinary Process in the records of the Congregation of Sacred Rites, and although the writings of the aforementioned had not been examined and reviewed, and also the Reverend Cardinal John Baptist Pitra, promoter of this Cause, at the urging of the Reverend Canon Gustav Gallot, Honorary Chamberlain of the Most Holy Pope Pius IX and Postulator of this Cause, after considering the letters of request from several distinguished individuals, especially those holding ecclesiastical dignities, in the Ordinary Congregations of Sacred Rites held today in Vatican, proposed the following question for discussion: Whether the Commission for the Introduction of the Cause should be signed in this case, and to the effect of what is being considered? "And the Sacred Congregation, after carefully considering all matters and after hearing the voice and written opinion of the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, judged it fitting to respond as follows: Affirmative, that is, the Commission should be signed, if it pleases the Most Holy [Pope]. August 31, in the year 1872.

[*Latin ed. p. 140*]

140 Decrees: "Afterward, concerning the aforementioned matters, a faithful report was made to the Most Holy Pope Pius IX by the undersigned Substitute of the Congregation of Sacred Rites. His Holiness approved and confirmed the judgment of the Sacred Congregation, and signed with his own hand the Commission for the Introduction of the Cause of the Venerable Servant of God, Benignus Joly, mentioned above. On the seventh day of September of the same year. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. For the Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute of Naples. Concerning the Beatification and Canonization of the Venerable Servant of

Translated by churchlatin.ai, a product of Boyne Archives

God, Father Aegidius Maria of Saint Joseph, of the Order of Friars Minor Observant of Saint Peter of Alcantara, of the Province of Lecce. DECREE: "Since it was necessary in the Ordinary Congregation of Sacred Rites to deliberate on the validity of the Apostolic Process, established with authority concerning two miracles, which are said to have been wrought by God through the intercession of the aforementioned Venerable Servant of God, and in the absence of the Eminents and Reverend Cardinals Hannibal Capalti, in place of the Eminents and Reverend Cardinals, and Alexander Barnabò, the following question was proposed in the Ordinary Congregations of Sacred Rites held today at the Vatican: 'Is it certain that the Apostolic Process, constructed in the City of Naples concerning two miracles, said to have been wrought by God through the intercession of the aforementioned Venerable Servant of God, is valid? Are the witnesses duly and properly examined, and have the testimonies been legitimately obtained, in the case and to the effect of which we are speaking?' Furthermore, the Eminents and Reverend Fathers entrusted with the safeguarding of the Sacred Rites, having carefully considered all things, and after hearing the Reverend Father Lawrence Salvati, Coadjutor to the Promoter of the Holy Faith, responded: Affirmative. On the thirty-first day of August, 1872. "Afterward, concerning the aforementioned matters, a faithful report was made to the Most Holy Pope Pius IX by the undersigned Substitute of the Congregation of Sacred Rites. His Holiness approved and confirmed the judgment of the Sacred Congregation. On the fifth day of September of the same year. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. In place of the signature. For the Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute."

[*Latin ed. p. 141*]

Decrees from Bugella, and Venice, concerning the Dominican Order. Concerning the confirmation of the veneration rendered from time immemorial to the Servant of God, Augustine Fangio of Bugella, a professed priest of the same Order, now beatified. DECREE. "Since the Reverend Father Vincent Acquarone, a professed priest and General Postulator for the causes of beatification and canonization of the Servants of God of the Dominican Order, has diligently demonstrated, through irrefutable documents, that the Servant of God, Augustine Fangio of Bugella, a professed priest of the aforementioned Order, has received public and ecclesiastical veneration from time immemorial, namely before the hundred years required by the decrees of the Most Holy Pope Urban VIII, and that this veneration has continued to the present time, and has urged that the same veneration be confirmed by this Holy Apostolic See, the undersigned Cardinal, Prefect of the Sacred Congregation of Rites, and promoter of this cause, proposed the following question for discussion

Translated by churchlatin.ai, a product of Boyne Archives

in the Ordinary meetings of the aforementioned Sacred Congregation, held today in the Vatican: 'Whether it is established that this case is an exception to the decrees of the Most Holy Pope Urban VIII, or whether the veneration rendered to the aforementioned Servant of God has been from time immemorial and is confirmed by abundant testimony from various authorities?' Furthermore, the Most Reverend Fathers, Prefects of the Sacred Rites, after mature deliberation, and after hearing the Reverend Doctor Lawrence Salvati, Coadjutor to the Promoter of the Holy Faith, who expressed his opinion both verbally and in writing, judged it fitting to respond: Affirmative. August 31, 1872. "Concerning all of the above, a faithful report was subsequently made by the undersigned Substitute of the Secretariat of the Sacred Congregation to the Most Holy Pope Pius IX, and His Holiness approved the decree of the Sacred Congregation and confirmed the public and ecclesiastical veneration rendered from time immemorial to the Blessed Augustine Fangio of Bugella, Confessor. September 5th of the same year." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. In place of the Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute.

[*Latin ed. p. 142*]

142 Decrees of the Roman See, or Edict. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Angelus of Pas, a Priest of the Order of Friars Minor of the Strict Observance, Reformed. DECREE. "In the cause of beatification and canonization of the aforementioned Venerable Servant of God, Father Angelus of Pas, since it was necessary to proceed in the Ordinary Congregation of Sacred Rites concerning the validity of all processes instituted in said cause, at the request of Reverend Father Vincent of Vienna, a Priest of the Order of Friars Minor of the Strict Observance, Reformed, and General Postulator of the causes of beatification and canonization of the Servants of God of the aforementioned Order, His Eminence and Reverend Cardinal Hannibal Capalti, in place of and in the stead of His Eminence and Reverend Cardinal Andrea Bizzarri, Promoter of the Cause, who was absent, proposed the following question in the Ordinary Congregations of Sacred Rites, held this day at the Vatican: Whether it is permissible, by Apostolic and Ordinary authority, for examiners and witnesses to be duly examined in the case and concerning the matter in question? His Eminence and Reverend Fathers, Prefects of the Sacred Rites, after careful examination of all matters, and after hearing Reverend Father Lawrence Salvati, Assistant to the Promoter of the Holy Faith, judged it fitting to respond: Affirmative. August 31, 1872. "The aforementioned matters having been faithfully reported to His Most Holy Lord Pope Pius IX by the undersigned Substitute of the Congregation of Sacred Rites, His Holiness was pleased to ratify and confirm the judgment of the Sacred Congregation. September 5th of the same year." C. Card. PATRIZI, Bishop

Translated by churchlatin.ai, a product of Boyne Archives

of Ostia and Velletri, Prefect of the Sacred Congregation. For Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute. Naples. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Aloysius of the Most Holy Cross, a Priest of the Order of Friars Minor Discalced of the Strict Observance, of the Province of St. Peter of Alcantara, of Naples. DECREE. "At the request of the Reverend Father Postulator of the cause of beatification and canonization of the aforementioned Venerable Servant of God, Father Aloysius of the Most Holy Cross, His Eminence and Reverend Cardinal Hannibal Capalti, in place of and in the stead of His Eminence and Reverend Cardinal Alexander Barnabò, Promoter of the said cause, who was absent, proposed the following question in the Ordinary Congregations of Sacred Rites, held this day at the Vatican: Whether the judgment of the Judge delegated by His Eminence and Reverend Cardinal Archbishop of Naples, concerning the cult of the Venerable Servant of God, Father Aloysius of the Most Holy Cross, which was never presented, or concerning the decrees of His Holiness Pope Urban VIII, is to be confirmed in the case and concerning the matter in question? His Eminence and Reverend Fathers... "

[*Latin ed. p. 143*]

Decrees 143 and the Most Reverend Fathers appointed to safeguard the sacred rites, having carefully considered all matters, and having heard the voice and written testimony of the Reverend Lawrence Salvati, Coadjutor Promoter of the Holy Faith, decided to respond in writing: "Affirmative, or the opinion is to be confirmed." On August 31, 1872. "Subsequently, a faithful report of the above was sent to His Most Holy Father Pope Pius IX by means of a transcript from the Substitute of the Congregation of Sacred Rites, and His Holiness deigned to declare the Rescript of the Holy Congregation to be ratified and confirmed in all respects. On September 5th of the same year." C. Card. PATRIZI, Bishop of Ostia and Velletri, S.R.C., Prefect. In place of the Reverend Father Dominic Bartolini, Secretary, Joseph Ciccolini, Substitute. Concerning the Canonization of the Blessed Nicholas of Flue, Hermit of Switzerland. DECREE. "The Blessed Nicholas, also known as Nicholas of Rupe, first saw the light of day in the town of Saxe in the Diocese of Coutances on the twenty-first of March, in the year 1417, during the pontificate of Pope Saint Benedict, and was cleansed with the waters of Baptism in the nearby church of Kern. While his most pious parents were engaged in agricultural labor, he, after a childhood of remarkable innocence, devoted himself to cultivating the fields, and he began to perform this duty diligently, always proving himself most obedient to his parents. Meanwhile, being most studious in observing the divine law, he always abhorred sin, and not only by his example, but also by sacred admonitions, he strove to encourage those around him, and especially his contemporaries, to strive for virtue with all their strength. Obeying the desire of his

Translated by churchlatin.ai, a product of Boyne Archives

parents, he took a pious and virtuous wife, from whom he had ten children, whom he endeavored to instruct in virtue. Because he excelled in integrity of character and prudence, Nicholas was honored with the highest offices of the Republic and was included among the senators. Indeed, he gained so much esteem from his fellow citizens that, through his intervention, the Swiss Confederation was increased and strengthened by the addition of two cantons. Burning with a desire to serve God more intensely, he decided to renounce worldly affairs and his family. Therefore, after mature deliberation and with the consent of his wife, he entrusted the care of the family to his eldest son. Then, before completing his fiftieth year, strengthened by divine grace, he first went to Liechstal, and then withdrew to the Valley of Ranfft, where he began a harsh life, building a wooden cell so narrow that he could not even stand upright in it. He put on a rough tunic, and with bare feet..."

[*Latin ed. p. 144*]

144 Having completed the prescribed decrees and investigations, he observed the most rigorous fast, spent a brief period each night in prayer upon his bare mattress, and diligently devoted himself to prayers and other pious exercises. He frequently visited the chapel to attend Mass and to receive the Sacraments of Penance and the Eucharist; which he subsequently performed in the sacred chapel, erected near his cell, so that he would not need to leave his hermitage. When he reached his seventieth year, he peacefully departed this life in the kiss of the Lord in the year 1487, on the very same day on which he had been born. After his death, the fame of his sanctity, which had already existed among all the Swiss, increased so greatly through the reports of miracles, that crowds of people flocked to his tomb, publicly honoring him. Regarding such veneration, the Congregation for Sacred Rites judged that it was warranted, since, in a case such as this, the actions of a person, even those exceeding a century in duration, are considered to surpass the limits of human memory, and therefore, it was confirmed by the Supreme Pontiff Innocent X, by decree on November 21, 1648. When the Sacred Prelates and the Catholic Society of the Swiss, named after Pius IX, offered prayers to the same Most Holy Lord, so that the cause of Blessed Nicholas might proceed further; His Holiness granted an apostolic dispensation on August 12, 1869, to examine the question concerning the virtues of the aforementioned Blessed Nicholas of Flue, before proceeding further in the Congregation for Sacred Rites, without the intervention and vote of the Consultors, but reserving the faculty for the Prelates of said Congregation to openly express their opinion on the same question, if they so desired. Therefore, from the Reverend Father Aloysius Billio, Cardinal, Relator of the same cause, and from the Reverend Father Francis, a valiant Apostolic Missionary from the Congregation of the Precious Blood of Our Lord Jesus Christ, and Postulator of the cause,

Translated by churchlatin.ai, a product of Boyne Archives

the following question was proposed: "Is it established that the aforementioned Blessed Nicholas possessed the Theological and Cardinal virtues, along with their associated qualities, in a heroic degree, so that the cause may proceed further?" This same question was carefully examined, and the Eminent Fathers Cardinals, Prefects of the Congregation for Sacred Rites, convened in ordinary meetings at the Vatican, after mature deliberation and examination of all that had been presented in the same cause, and after hearing the Reverend Father Lawrence Salvati, Assistant to the Promoter of the Holy Faith, judged it advisable to respond affirmatively. On September 28, 1872. "Concerning all of the above, a faithful report was subsequently made to the Most Holy Lord Pope Pius IX by me, the undersigned Secretary, and His Holiness graciously approved, and declared the decree of the Sacred Congregation valid and confirmed. On October 3 of the same year. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. S. D. Bartolini, Secretary of the Sacred Congregation.

[*Latin ed. p. 145*]

Decree 145, Bellicensis. Concerning the Beatification and Canonization of the Servant of God, John Baptist Mary Vianney, Parish Priest of the village of Ars, in the Diocese of Bellicensis. DECREE. "On the first of February, in the year 1866, when Our Most Holy Lord Pope Pius IX, with paternal benevolence, ordered that the matter concerning the introduction of the cause of the Servant of God, John Baptist Mary Vianney, aforementioned, be considered in the Ordinary Congregation of Sacred Rites, without the intervention or vote of the Consultors, although less than ten years had elapsed since the presentation of the Ordinary Process in the acts of the Congregation of Sacred Rites; We, and the Most Reverend Cardinal John Baptist Pitra, Promoter of this Cause, at the request of the Reverend Monsignor Theodore Boscredon, Honorary Chamberlain to Our Most Holy Lord Pope Pius IX, and Postulator of this Cause, and of several Cardinals of the Holy Roman Church, as well as numerous Archbishops and Bishops, and also other men distinguished by ecclesiastical or civil dignity, in the Ordinary Congregations of Sacred Rites, convened this day in Vatican, proposed the following question for discussion: Whether the Commission for the introduction of this Cause should be signed, in this case and for the purpose in question? And the Sacred Congregation itself, after mature deliberation on all matters, and after hearing the Reverend Father Lawrence Salvati, Assistant to the Promoter of the Sacred Congregation of the Holy Office, judged it advisable to respond: Affirmative, that is to say, that the Commission should be signed, if it pleases the Most Holy [Pope]. On the 28th of September, 1872. Subsequently, a faithful report of the aforementioned matters was made to Our Most Holy Lord Pope Pius IX by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation, and with his own hand signed the

Translated by churchlatin.ai, a product of Boyne Archives

Commission for the introduction of the cause of the Venerable Servant of God, John Baptist Mary Vianney, aforementioned. On the 3rd of October of that same year." C. Card. Patrizi, Bishop of Ostia and Velletri, S.R.C., Prefect; L. D. Bartolini, S.R.C., Secretary; Acts, Volume VII, page LXXV, 10.

[*Latin ed. p. 146*]

FROM THE HOLY CONGREGATION CONCERNED WITH THE COUNCIL OF TRENT, SPECIFICALLY APPOINTED BY THE MOST HOLY FATHER, REGARDING THE NULLITY OF A DECREE, dated February 24, 1872. Summary of the case. In the town of C, in the diocese of N, there exists a rural church, in which a simple benefice of free collation was established, which for many years has been held by Francis, a priest of a different diocese, and which yields an annual income of 130 or 150 scudi. In the year 1857, the Bishop of said diocese of N, at the request of the Chapter, during an actual Visitation, learned that the revenues of the sacristy of the cathedral church were indeed sufficient to cover the customary expenses and burdens, but were not sufficient for the repairs needed by the fabric of the cathedral church. Therefore, having presented the supposed active and passive accounts of the sacristy, from which this need was demonstrated, the Fiscal Procurator of the episcopal court proposed that the simple benefice of said town of C be permanently united to the sacristy of the cathedral church, so that this union would take effect when the simple benefice became vacant. Therefore, with the consent of the Bishop, on March 24, 1857, the following decree was issued: "Having seen, considered, and weighed, with the authority with which this Holy See functions in this matter, and in the course of the Visitation, all the goods, revenues, fruits, and proceeds of the aforementioned ecclesiastical benefice, or chapel, now and from this time forward, and in whatever way it may become vacant, are permanently united, annexed, and applied to the aforementioned sacristy, together with all its burdens..." But on July 26, 1861, by decree of the Holy Congregation, the town of C was separated from the diocese of N.

[*Latin ed. p. 147*]

Concerning the nullity of the decree 147, the Bishop of diocese B, neighboring this diocese, during his pastoral visitation of that town, in a report he sent to the Sacred Congregation of the Council, among other things, stated: "A benefice has been established, not 'in this church residentially,' but the holder, 'having 150 scudi annually,' besides the obligation of contributing to the maintenance of the church and the sacred furnishings, is obliged to celebrate Mass there every Sabbath. The rector of this benefice is a certain priest (Francis of another diocese), but from this ministry, the people and the farmers receive no spiritual benefit whatsoever." However, since no mention was made by the Bishop of the union of this benefice

Translated by churchlatin.ai, a product of Boyne Archives

with the sacristy of the cathedral N, it appears that both the Bishop B and the inhabitants of the town were unaware of this. Indeed, as soon as they heard of it, and upon its being brought to their attention, a humble petition, signed by thirty people, was presented to the Sacred Congregation of the Council, in which it was stated that, if the decree of March 24, 1857, were to take effect, "it would cause a most grievous spiritual harm to that unfortunate town, which, due to its unhealthy air and the scarcity of benefices, has only three resident priests, and in which the population in the town itself does not exceed one thousand inhabitants, and in the winter season reaches approximately three thousand inhabitants," since to it come those who come to cultivate the fields, or to graze sheep and other livestock, mountain people. Having received this supplication, the Sacred Congregation, according to custom, requested opinions from the Chapter of N and from the Ordinary, and also from Bishop B, who all presented their reasons: the former for the value of the decree, the latter for its nullity. Having received these reports, and since the matter came to a dispute, according to custom, a decree was issued by the Secretariat of the Sacred Congregation of the Council, stating that the parties should be notified of their rights, so that they might present their case before the Sacred Congregation: but the parties, besides being notified, did nothing else, and presented no further arguments than those presented in the initial...

[*Latin ed. p. 148*]

Regarding point 148, a concise discussion on the nullity of the decree. JURISPRUDENCE CITED BY THE BISHOP. This Bishop, arguing for the nullity of the decree, cited the Tridentine Decree, chapter 13, session 24, concerning Reforms, stating that Bishops can indeed unite simple benefices, but only with *praebendae*, which are insufficient to maintain the proper dignity of the benefice, considering the place and the quality of the individuals; but they cannot unite benefices of the sacristy or another similar religious purpose, because when the union of benefices involves a diminution of divine worship, the faculty granted to Bishops by the Council of Trent cannot extend beyond the *praebendae*, but must be limited to them. Thus, the canonical discipline is understood. Furthermore, Gonzalez, in *reg. 8, Cancell. gloss. 37, n. 23*, refers to the Holy Congregation of the Council denying the faculty to Bishops to unite benefices of the chapter house, and only approving the union of benefices with the meager *praebendae* of individual canons; also, Barbosa in *Summa Apostolic. decis. verb. Unio, n. i*; and the Holy Congregation of the Council, as reported by Alda in *compend. Resol, can., I. 3, tit. 31, n. 21*, on February 5, 1601, denied the annexation, when there were no distinct *praebendae* in the cathedral and all revenues flowed into the common mass, although these revenues were meager; also, S. Rotam and the authors of Loterius, on benefices, I. i, c. 2Ç, n. 43; Gallemart, concerning chapter 15, session 24, concerning Reforms, n.

Translated by churchlatin.ai, a product of Boyne Archives

i; Barbosa, concerning the same Council chapter, and others. From these, it can be deduced that a benefice cannot be united with the sacristy or the church fabric; concerning this, Ferraris, *Unio, n. 60*; *Biblioth. can., verbo « neque potest Episcopus unire Beneficia capel- « laniis etiam Cathedralis, quae habent redditus tenues, quia « Concilium Tridentinum, sess. 24, c. 13, loquitur solum de « Praebendis. Item neque Sacristiae neque fabricae. Sic decipe sum fuisse a S. C . C . refert Garcías, « n. JÇO ». de Benef, p. iç, c. 2*.

[*Latin ed. p. 149*]

Regarding the nullity of decree 149, furthermore, Bishop B, chapter g, session 14, concerning reforms, states that it is established that benefits of one diocese should not be united with benefits of another; he observes that the censure of this chapter would apply to the completed union, if it were to take effect, because of the dismemberment of that town from its original diocese, which has already been ordered for execution. Finally, he explained that that rural church greatly needs restoration and maintenance, which, as a burden, belongs to the beneficiary; but if that benefit were removed, that ancient church would fall into extreme ruin.

THE RIGHTS OF THE CATHEDRAL CHAPTER N. The Chapter, arguing for the value of the decree, states that that union was made for a known cause; that is, the active and passive state of the sacristy was shown, in which it was demonstrated that there were insufficient revenues for the repair of the building and for the proper upkeep of the church; and that the present conditions of the sacristy are almost the same as they were then. The concession and the union were legitimately made by legitimate authority, and therefore the cathedral church of N has full right to the revenues of that united benefit. That union was decreed at a time not long ago, that is, four years before the dismemberment of the town; that the benefit is not a residential one, so that its possessor does not reside in the town of C, etc.

FROM WHAT HAS BEEN ADDED EX OFFICIO. To confirm the opinion of Bishop B, the decree of the Council of Trent, session 24, 13 concerning reforms, is cited, which is worded as follows: "In cathedrals and collegiate churches of importance, where the prebends are frequent and, indeed, meager, together with daily distributions, so that they are not sufficient to maintain the decent rank of the canons according to the quality of the place and the persons, it is permissible for bishops, with the consent of the Chapter, to unite with them some simple benefits, but not regular ones..." And it is noted that the authors, especially Gonzalez, in Reg. 8 of the Chancery, and Garcia, p. 12, c. 2, n. 11, and others who cite and quote Gonzalez, indeed allege a certain resolution of the Sacred Congregation in Caven., of the year 1601, but that it is not found in the records of the Sacred Congregation; and that resolution is thus reported by Gonzalez, in the aforementioned place: "Therefore, I consulted and obtained from the Sacred Congregation

Translated by churchlatin.ai, a product of Boyne Archives

a decree concerning the matter of the month..."

[*Latin ed. p. 150*]

Concerning the nullity of the decree of September 1, 1601, which stated that a union made by the Bishop of Aversa of the "mensa capitulari" [chapter endowment] with certain simple benefices, in virtue of the Council of Trent, session 24, chapter 13, concerning reforms, was null, because the Council did not grant the power to unite the "mensa capitulari," but rather to "tenuous Praebendae" [individual endowments] of the individual chapters. But the same resolution is found in Calven, on September 23, 1609, in volume 2 of the Decrees, page 66, on the reverse side, which reads as follows: The Sacred Congregation of Cardinals, interpreting the decree of the Council of Trent, in the aforementioned chapter (15, session 24, concerning reforms), declared that the decree of the Council grants the Bishop the power to unite simple benefices with the distributions of individual endowments, but not with the "mensa capitulari," and therefore, a union of the "mensa capitulari" made by the Bishop without the authority of the Apostolic See is null. Concerning this resolution, Fagnanus wrote extensively in chapter "Exposuisti, de Praeb, et Dignit." [You have explained concerning endowments and dignities], numbers 28-33. Furthermore, to confirm this matter, the case of Aversa is cited, concerning the nullity of a union, of July 12, 1735, the details of which are as follows: In the cathedral church of Aversa, the hebdomadarii [those serving weekly] did not have distinct endowments, but received daily distributions, which amounted to approximately thirty scudi per year. At the request of the hebdomadarii, in order to better serve divine worship, the Bishop, with the prior consent of the Chapter, united three simple benefices that were held by a certain Michael, a canon of the same cathedral. Although this union took effect when these three benefices became vacant, Michael protested, arguing that there was no cause for the union, if the matter were considered according to the ancient law; for there was no necessity. However, considering the matter according to the new law of Trent, the Bishop did not have the power to unite benefices except with endowments, which the hebdomadarii did not have. Finally, the case was brought before the Sacred Congregation, with the following questions: "I. Does the nullity of the union exist in this case? And, to the extent that it is affirmative: "II. Is it permissible for the Bishop to proceed to a new union in this case?" The response was: to the first question, affirmative; to the second question, negative.

[*Latin ed. p. 151*]

Concerning the Nullity of Decree 151. Since, therefore, the Ordinary has not conferred a simple Benefice upon the Canons, according to the norms of the Council of Trent, it does not seem that such a union can be sustained. Nevertheless, it has been noted that a reason for doubting this arises from

Translated by churchlatin.ai, a product of Boyne Archives

the doctrine presented by Garcías, in *De Beneficiis*, part 3, chapter 2, paragraphs 7 and following, which would be favorable to the Ordinary. Thus, Garcías wrote: "And the Ordinary can make unions even with monasteries and religious houses, as is stated in the aforementioned chapter, in the Consultations, chapter Pastoral and Clementine. If one [asks], the Rota, in decision 2, *de officio Ordinarii in antiq. Felin.*, in chapter In nostra, paragraph 42, *de Rescriptis*, even though religious and monasteries are exempt, Cald., council 3, *de rebus ecclesiae*, Card., in the aforementioned Clementine, if one [asks], number 13, Caccialup., article 4, question 4, and the practical rulings of the Rota, above, number 1, although Peter of Perugia, chapter 4, paragraph 10, holds the contrary; and also with the fabric of the church, even the cathedral, Imol., in the aforementioned Clementine, if one [asks], number 14, and in chapter *Cum accessissent*, paragraph 4, *de Constitutionibus*, and there, Felin., paragraph 22, Rota, decision 133, paragraph 6, page 2, *divers.*. Nor does the following Declaration concerning the aforementioned chapter 13, session 24, given to the Bishop of Tudertin, stand in the way: The Ordinary or Bishop cannot unite simple Benefices with the distributions of the canons of the cathedral church for the increase of divine worship, and neither can he make such unions with the fabric or sacristy, because of its poverty, for ornamentation and other necessities of the church; even if it bears all the burdens of the aforementioned church and possesses very little: because it must be understood that (this Resolution of the Council of Trent) does not allow the Ordinary, through the aforementioned Decree of chapter 15, to make these unions, since it speaks only of *Praebendae* [Benefices]; however, it does not deny that he can make them through other means, according to common law. This understanding is confirmed by another Declaration concerning the aforementioned chapter 15, which seems to be the same as the former, and it says: By this Decree, it is not permitted to the Ordinary to unite Benefices with the chaplaincies, even those of cathedrals, which have meager revenues, since it speaks only of *Praebendae*; neither with the sacristy nor with the fabric. But..."

[*Latin ed. p. 152*]

152 Concerning the nullity of the decree: "It must be understood that such a union was made with some church, or religious place, as in one at Burgos, Praestimonii, 27 June 1603, before De Lita." The question: "Whether and how the Decree of Union is maintained in this case..."

RESOLUTION. The Holy Congregation of Councils, having knowledge of the matter in the meetings held on 24 February 1872, judged it fitting to respond: Negatively.

FROM WHICH YOU MAY GATHER: I. The Decree of the Council of Trent, granting bishops the faculty of uniting simple benefices to the cathedral or collegiate church (if the benefices, with their daily distributions, do

Translated by churchlatin.ai, a product of Boyne Archives

not suffice to maintain the deserving rank of the canons, according to the quality of the place and persons), is to be interpreted strictly.

II. Before the Council of Trent, the bishop could unite chapels, or parish churches, to the canons, as the interpreters from the chapter "Concerning Benefices" state, in which Honorius III responded to the Bishop of Veszprém: "You have informed us that the canons of your church, since the time of the General Council (at Lateran under Innocent III), have not been provided with chapels, as was customary before, and that they cannot be sustained from the revenues of their benefices, and below. If evident necessity or utility demands it, you will be able to augment the benefices of your church by permanently attaching chapels to them (as you seem to have previously determined), reserving, however, a suitable portion for the priests."

Indeed, Innocent III did not directly prohibit the uniting of parish churches with benefices in the Council of Lateran, but he disapproved of the custom whereby a suitable portion was not given to the vicar who administered the parish, as is more fully seen in chapter "Concerning the Abolition of," concerning benefices. But the Council of Trent, in chapter 13, session 24, concerning reforms, while granting bishops the faculty of increasing the revenues of parish churches, strictly prohibited the uniting of parish churches with benefices, thus stating: "In parish churches also, of which the revenues are equally meager, so that they cannot satisfy their debts and obligations, the bishop will see to it that, if it cannot be accomplished by the union of benefices, not regular ones, that only a portion be reduced, either by the assignment of primicias or tithes, or by the symbols and collections of the parishioners, or by whatever other means he may deem most convenient, so that it may suffice decently for the needs of the rector and the parish. In all unions, whether those mentioned above, or others, the church must be maintained."

[*Latin ed. p. 153*]

Concerning the nullity of decree 153 II.

I. Why this faculty should not extend to those "Praebendae," which are only nominally called "Praebendae," that is, when they consist only of daily distributions.

II. Nor should it extend to the capitular table, although canons receive income from the capitular table, which is considered meager.

III. Much less should this faculty extend to the upkeep of the sacristy or the fabric of the church.

IV. Therefore, the words of the Council of Trent are only valid to the extent that they express, especially when the matter concerns a union of benefices which is odious in its nature and appears to be an alienation.

V. Therefore, whenever a Bishop is unable to unite simple benefices by

Translated by churchlatin.ai, a product of Boyne Archives

force of the aforementioned canon 15 of session 24, there is no other recourse than to seek the granting of this faculty from the Holy See.

VI. Furthermore, in addition to the fact that no union existed from what has been said, the circumstance also arose that the union, which had not yet been ordered for execution, fell into a case from which it could not begin, namely, the dismemberment of the later diocese. "Let [them] not be united with any monasteries, or abbeys, or dignities, or with 'Praebendae' of a cathedral or collegiate church..." Therefore, since the Council of Trent forbade these unions of parishes with the "Praebendae" of a cathedral or collegiate church, which were still permitted after the Council of Lateran held under Innocent III, when there were evident canonical reasons of necessity or utility; in chapter 15, session 24, concerning reforms, in order that another means might be provided for increasing the income of canonical "Praebendae," it decreed: "It is permitted to Bishops, with the consent of the Chapter, to unite with them certain simple benefices, etc." And thus, having denied the faculty of uniting parish churches, which unions were not infrequent at that time (see the reason I have explained in Volume IV, page 401), it granted the faculty of uniting simple benefices with "Praebendae," with which the Church was seen to abound at the time of the Council of Trent. Therefore, since the Council of Trent specifically made provisions regarding the manner in which Bishops could increase the meager capitular "Praebendae," it seems to have decreed, by force of this chapter alone, whatever may have been of the old law, that Bishops could unite simple benefices with "Praebendae" and in the manner that it prescribed. This opinion has been confirmed by the Holy Congregation of the Council in its authentic resolutions; although the renowned Garcias, insisting on the old law, which is not yet entirely settled, has sought to restrain these resolutions.

[*Latin ed. p. 154*]

Chaplaincies 154 CHAPLAINCIES. On December 15, 1871. Summary of the facts. In the year 1737, a certain Marcus Leonardi founded a chaplaincy according to the following regulations: "He established a purely secular chaplaincy in the venerable church of the Annunciation. For the endowment and perpetual fund of said chaplaincy, he constituted and assigned fifteen places in Mont S. Petri... with the assignment and reservation of the fruits for the chaplain at the time, who is obligated to celebrate, or to have celebrated, twenty-seven Masses each month... These places in Mont S. Petri shall perpetually remain subject, obligated, and mortgaged for the fund and endowment of said chaplaincy, so that at no time, under any pretext or cause, they may be sold or alienated. For the first chaplain to celebrate said Masses, he nominated and nominates Reverend Sylvester de Salvis, during his natural life, with all honors, privileges, etc., to whom he also granted the faculty of nominating another chaplain after his death...

Translated by churchlatin.ai, a product of Boyne Archives

and said chaplain shall be able and may nominate another chaplain after his death, with the obligation always to celebrate, etc. Afterwards, after the death of said three chaplains, D. Marcus desires that the right of nominating other chaplains for the time being belong and pertain to the heirs and successors of D. Marcus, during their male and female line, and in the case of the expiration of said line, he desires and commands that the right of nominating revert to the house of said Reverend Sylvester de Salvis, etc." Finally, he established that the chaplain of the places in Mont S. Petri, for the assigned fruits at the time, may freely demand them for the aforementioned chaplaincy, etc."

[*Latin ed. p. 155*]

Chaplaincy 155. According to the pious founder's will, affairs in the early years of this century went very well politically, until the vicissitudes reduced the fifteen properties to five; moreover, during this period, the building of St. Peter benefited from the negligence of the Patrons, until it was reclaimed. During the Visitation, finding the chaplaincy vacant, and the Bishop, unaware in that year whether the founder's heirs existed, ignorant of the laws of the foundation, granted it in 1826 to Pasciano, with the condition that he should possess it until proof of the foundation is presented, by which his right is recognized. The following year, a Patron appeared to the local parish priest, who nominated the same parish priest to the chaplaincy, who, already possessing it with the aforementioned condition, should enjoy it as long as he exercised the office of parish priest in Pasciano. When this chaplain died, the parish priest who succeeded him, Benedict N, requested the fruits of the chaplaincy by title of parish priest of that place, but found an opponent, who argued that the chaplaincy could not be considered united to the parish against the foundation's charter; however, he obtained it through the nomination of the Patron, who added a public deed and this clause to the act of nomination, namely, that as long as the aforementioned parish priest is in the place of Pasciano, upon his cessation from the office of parish priest, a new parish priest of the same place will succeed in the chaplaincy indefinitely. This parish priest, Benedict N, later obtained a canonry; and therefore, he relinquished the chaplaincy when he ceased to be a parish priest. Sylvester, a priest, succeeded him in the parish of Pasciano, who, believing the chaplaincy to be truly and perpetually united to the parish, sought the fruits of it; but Benedict N, who had relinquished the chaplaincy, and who had the consent of the Patrons of that time, held a contrary opinion. Indeed, the same Patrons, through deeds, nominated Benedict N again as chaplain, for as long as he lived, reserving for themselves and their heirs and successors, after his death, the

Translated by churchlatin.ai, a product of Boyne Archives

free nomination. of the chaplaincy.

[*Latin ed. p. 156*]

156. With these actions, Sylvester did not comply, and consequently, a dispute arose between Benedict and Sylvester, which was brought before the Sacred Congregation of the Council. The Ordinary, who was still unaware of the law establishing the foundation, held the opinion that the decree made during the actual visitation should be maintained, until the law of the foundation was made clear; indeed, he added that it was not certain that those who had previously been appointed to the chaplaincy descended from the line of the founder, and therefore, it was not certain that they were patrons of the chaplaincy. Reaching this point, as is customary, a decree was issued by the Secretariat of the Sacred Congregation of the Council, noted on the page, and sent back to the Ordinary, instructing him to advise the parties to present their rights before the Sacred Congregation of the Council.

A concise summary of the arguments:

RIGHTS OF THE PATRONS. The patrons, through their advocate and the chaplain Dominic, presented their rights, which are briefly outlined, as the issue is one that admits of an easy solution, once the law of the foundation has been made clear by the patrons, as I explained at the beginning. Therefore, the patrons claimed the right to nominate, based on the weighty reason that no one had ever questioned their origin from the founder Leonard, and that it was impossible that such a right to nominate, exercised for so many years and through so many appointments within the family, had never encountered anyone making a claim. Regarding the clause concerning nominations, which the patrons, when nominating a parish priest to Pasciani, added "as long as the parish priest holds office, or during the parish priest's ministry, and upon the cessation of the parish priest's office, a new parish priest will succeed in the chaplaincy indefinitely," they stated that these words were not written with the intention of uniting the chaplaincy with the parish; nor, if they had wished, could they have done so; for the patrons cannot alter the nature of the patronage and overturn the law of the foundation, as stated in Clementines II, concerning religious houses, and the Council of Trent, session 23, chapter 5, concerning reform. Nor does the text, which explicitly states that the right of patronage can be granted, in the chapter concerning the suggestion of patronage, present any obstacle; for such is the case.

[*Latin ed. p. 157*]

The text of a chaplaincy can occupy a place, provided that the law of its foundation does not obstruct: as in Pistorien., concerning legal patronage before Merlin on March 31, 1628, § 6: "Furthermore, some lords considered that the Holy See doubted whether James, even if he wished, could alter

Translated by churchlatin.ai, a product of Boyne Archives

the nature and status of legal patronage... and thus overturn the will of the founder... and in these terms, the Patron cannot freely dispose of it, as Ferret states, council 1, 3, 4." And again, there, § 6: "The reason why the status prescribed by the founder in legal patronage cannot be changed by successors lies entirely in the lack of power, since the heir cannot, even with the consent of the Order, alter the will of the founder, but in such a case, an Apostolic dispensation would be necessary." PAROCHIAL RIGHTS. It was stated that, by the Ordinary's decree, a chaplaincy had been granted to the parish church of Pasciano, and although a limitation had been added, until the document of foundation is revealed, by which the right is recognized, this limitation nevertheless ceased, when the Patrons renounced their rights through two clauses added to the nominations, in the second of which the word "forever" was added; and this renunciation or donation was considered to have been accepted by the Parish Priests, so that Masses to be celebrated were inscribed in the catalog of parish Masses, and the administration of the chaplaincy's revenues was in the hands of the Parish Priests, which they had claimed from the Fabric of St. Peter. Since these things are so, the true union of the chaplaincy with the parish church has been completed, and no further place can be given to penance. It is known in law that such unions are maintained, especially if it concerns a secular matter, such as is the case with a chaplaincy, which, when reduced to a pious purpose, does not require the solemn formalities of law, which are necessarily required in unions of legacies, with the consent of the Bishop, of ecclesiastical benefices under legal patronage. With these and other similar observations, the proposed matters must be resolved.

[*Latin ed. p. 158*]

Chaplaincies 158. Doubts. I. "Does it pertain to the true and perpetual union of the chaplaincy "Leonardi favore ecclesiae parochialis Pasciani" with the parish in this case? And to what extent? Negatively. II. "Does the designation and possession of the same chaplaincy "favore Sacerdotis Benedicti (JV.)" pertain in this case?"

RESOLUTION. December 15, 1871. The Holy Congregation, having knowledge of the matter, decided to respond as follows: To I. Negatively. To II. Affirmatively.

FROM WHICH THE FOLLOWING IS DEDUCED: I. Although, in law, it is certain that a lay patron can grant a right of patronage to someone, even to a church, with the consent of the Bishop: they cannot, however, make a donation if that donation would overturn the law of the foundation. II. This also applies to lay chaplaincies, which in a simple pious bequest are easily dissolved, although for such a transfer of rights, the consent of the Bishop is not required.

2. That lay patrons can grant a right of patronage to someone with the consent of the Bishop is a matter of law, as can be seen in chapter 8, on

Translated by churchlatin.ai, a product of Boyne Archives

the right of patronage, chapter 5, here, chapter 11, here, chapter 20, here, etc. However, a church or monastery having the right of patronage can donate it to another church, but with the necessary formalities required for the alienation of church property: because these incorporeal rights are almost attached to immovable property, as the authors state in the title on "Things of the Church that cannot be alienated." However, lay patrons cannot donate the right of patronage to a church, even with the consent of the Bishop, if the law of the foundation and the will of the founder would be overturned by such a donation; for in this case, all the legal provisions that require the will of the founders to be strictly enforced come into play, and the Bishops are the executors by nature. Compare what I have written in Volume II, page 369 and following. Thus, among others, Cardinal De Luca wrote in discourse 53, on the right of patronage, number 2: "I said that it is an unjust opposition, because in the case of a donation of "the right to present or appoint chaplains," those things that are deduced from the opposite side come into play regarding the prohibition of donating the right of patronage without the consent of the Ordinary (so that neither the Vicar General is sufficient without a special mandate), when it is a matter of Benefices or a chaplain with Orders."

[*Latin ed. p. 159*]

Chaplaincies 159 III. How often, indeed, is the law of the foundation overturned by a donation or the cession of patronage? I V. However, setting aside all other considerations, patrons, if they should have been unjustly deprived of their personal right, could not, nevertheless, renounce the right to nominate a chaplain for the parish church, to the detriment of the successors whom the founder had designated. V. Nor could Benedict, once nominated to a chaplaincy, be deprived of it, even though he ceased to be a parish priest; for the chaplaincy was not, by the will of the founder, removable at pleasure, but was perpetual. 1 "Chaplaincies formally established by canonical authority are subject to the title of collation; otherwise, in chaplaincies of this kind, which do not have such a formal establishment, the rules of benefices do not apply, so that such chaplaincies, not only laymen, but also women and children, are capable of holding them, as is stated in Buratt., decr. 1; decr. 224 Dunozet, etc. And in the case of a donation or other grant of the right to appoint chaplains of this kind, the rules of benefices do not apply, Garzia, part. 1, chap. 1, no. 102." Garzia, in the aforementioned passage, concerning ecclesiastical benefices, part. 1, chap. 1, no. 102, writes: "But even perpetual chaplaincies, founded and established without the authority of the Ordinary, which are not approved and spiritualized by him, are not ecclesiastical benefices, and cannot be conferred by the Ordinary, but are subject to the pious disposition of the founder and his heirs or successors, who can donate such chaplaincies to whomever they wish, provided that they are suitable, according to the

Translated by churchlatin.ai, a product of Boyne Archives

disposition of the founder." I believe that the prior nomination made by Benedict, when he was a parish priest, remained valid, even though he ceased to be a parish priest: for the condition attached, namely: "as long as he remained a parish priest," was a condition contrary to, or at least beyond, the law of the foundation; and it was not within the power of the patrons to impose such a condition, since the chaplaincy was perpetual by the law of the foundation. Since, therefore, that condition was imposed and accepted through error, the nomination must remain valid in its entirety once the error is detected.

[*Latin ed. p. 160*]

FROM THE HOLY PENITENTIARY'S RESPONSE concerning lower officials of the national guard serving in territories belonging to the Holy See. The Ordinary of the diocese N. requested from the Holy Penitentiary: "Whether it is permissible to accept lower offices in the national guard, such as those of Sergeant, Corporal, and the like, in which no oath is taken." The Holy Penitentiary, after careful deliberation, responded on April 3, 1872: "To the extent that they have been compelled to serve in the militia and maintain those dispositions of mind which have been prescribed by the Holy Penitentiary in the responses published on December 10, 1860, it can be tolerated for them to accept some lower rank within the militia, in which the taking of an oath is not required, in order to alleviate the burden of a more onerous service. In the Responses given by the Holy Penitentiary on December 10, 1860 (which you have in Volume I, page 558), the following is contained: VIII 'What should be said concerning those individuals who, against their will, are enrolled and are compelled to be part of the same guard?' To this question, the Holy Penitentiary responded: 'It can be tolerated for civic soldiers who are compelled [to serve], who cannot abandon the militia without serious damage or inconvenience, provided that they are, in their hearts, prepared to abandon it as soon as they can, and in the meantime, abstain from all acts of hostility against the subjects and soldiers of the legitimate Prince, and from acts against ecclesiastical goods, rights, and persons.' 1 This applies specifically to the *Foriere*, who is a rank superior to the Sergeant, after which there is only the Corporal, who is the lowest rank. Note that the Response of the Holy Penitentiary has already been correctly reported in the Catholic ephemerides; but not in the manner in which I have presented it, which I have taken from an authentic source."

[*Latin ed. p. 161*]

Answer from the Decrees of Holy Penitentiary: I. Those who, having been subjected to the authority unjustly imposed upon the domains of the Holy See, are enrolled in the civic militia and cannot, without serious inconvenience, abandon that militia, do not act illicitly in remaining in that

Translated by churchlatin.ai, a product of Boyne Archives

militia, provided that they have the intention of abandoning it as soon as they can, and in the meantime abstain from designated illicit acts. II. For soldiers who are of this mind, and who have shown that mind in some way, cannot be called supporters of public usurpation, nor do they create scandal. III. The lower officials of the civic militia, who are in the same condition and have the same intention, are to be considered in the same light, unless something serious prevents it, such as an oath. IV. Although such lower officials are created by election, and their acceptance is necessary; nevertheless, since they are compelled to remain in that state of military service, justice does not allow them to neglect, as far as possible, their own well-being in a matter that is, in itself, indifferent.

LEGAL ANSWERS given by the Holy Penitentiary concerning doubts regarding the relationship between Regular clergy unjustly suppressed in Italy by an incompetent authority and the local Ordinaries: These Answers explain more fully the Instruction already given, which you have in vol. III, page 151. "Since the Holy Penitentiary, in a letter dated April 18, 1867, decreed in number 3: 'Houses of Regular clergy, suppressed, provided that at least three Regulars remain in them, of whom at least one must be a priest,' I have said that it is a matter that is, in itself, indifferent: for the duties that the lower officials of the civic militia must perform consist in carrying out and maintaining the assigned service of the citizens in the military, which in themselves contain nothing evil. Acts, vol. VII, section LXXV, 11."

[*Latin ed. p. 162*]

Responses 162 shall be subject to the jurisdiction of the Provincial Minister, and shall be regulated by the Superior specially appointed there:

"It is asked 1°: How ought Provincial and Local Superiors to act, when the Ordinary of the place wishes to visit and subject to his authority the churches and houses of the Regular Canons, who, living together in a number of three, hold the churches and houses of their Order?

"It is asked 2°: Does the aforementioned Decree of the Holy Penitentiary include the case in which, either due to a lack of lodging, or by force of circumstances, they cannot live together, yet many more than three convene daily to perform the Sacred Office, to hear Confessions, and to perform other necessary duties, in the church of their own Order, which is held by their brethren, and there also, either in the sanctuary, or in some chamber, they regularly discuss matters of the Order and the Convent?

"And, if so:

"It is asked 3: How ought the Superiors to act, when the Ordinary of the place wishes to subject the church and the Regular Canons to his visitation, as stated in 1°?

"It is asked 4: Are the Regular Canons, who, although they cannot live

Translated by churchlatin.ai, a product of Boyne Archives

together, nevertheless convene together, as stated in 2°, and on designated days, under the direction of one of their brethren, are they obligated to approach the Ordinary, or the parish priest of the place, to participate in said deliberations?

"Since in the same letter, no. 2, the Holy Penitentiary declared that the jurisdiction of the Superiors of the Regular Canons over their own subjects, even those living outside the cloister, has not at all ceased, and that these are subject only to the jurisdiction of the Ordinary of the place with regard to ecclesiastical discipline and order?

"It is asked 5: Does the Ordinary of the place, by virtue of this declaration, have the power, independently of the approval of the Regular Superior, and even against his express will, to order a Regular priest, who, although forcibly separated from his brethren, lives alone, to participate in all matters of his Order, with his Superiors?"

[*Latin ed. p. 163*]

Responses 163: Does the law grant the Ordinary power to permanently and irrevocably interfere with the execution of a religious order's duties or office?

"Question 6: Can the Ordinary of a diocese treat with dispersed members of a religious order regarding matters pertaining to the order, or to churches belonging to the order, in such a way as to make a decision without consulting the Superior of the order?

"Question 7: Can a parish priest summon and compel dispersed members of a religious order to perform ecclesiastical functions within his own parish church, even in the case where the religious are occupied in providing assistance to a church of their own order, and especially if they attend that church daily, as mentioned in section 2?

"It often happens that the civil government or municipalities, after having usurped the churches and houses of religious orders, grant these same churches and a portion of the houses to the Ordinary of the diocese, or to the parish priest, even with the express condition of establishing a parish or a chapel within those churches.

"Question 8: Can the Ordinaries of dioceses, and even the parish priests, use the churches or houses granted to them by the usurpers as they please, or are they rather obligated to restore the churches and houses to the Superiors of the religious orders to whom they rightfully belong?

"Question 9: In the case where a parish or a chapel is to be established within these churches, can the Ordinary of the diocese establish the parish or chapel, and provide for it independently of the Superior of the religious order, or rather is he obligated to establish and provide for the parish or chapel according to the manner prescribed by the Apostolic Constitutions for parishes of religious orders?"

Translated by churchlatin.ai, a product of Boyne Archives

SACRA PENITENTIARIA, after mature deliberation on the matters presented, decided that the following should be answered:

"Regarding the above: The churches and houses, as well as the religious residing therein, continue to enjoy the same immunity from the jurisdiction of the Ordinary as they did previously."

[*Latin ed. p. 164*]

Responses 164 concerning legal matters to Section II. To the extent that the aforementioned Regular clergy, who, due to a lack of lodging or by force, are prevented from residing within the cloister, may reside in a house adjacent to the monastery and may converse with those to whom it is permitted to reside within the cloister, as is asserted in the query, regarding the performance of sacred functions in the church belonging to them, and regarding matters pertaining to the Order and the monastery, the answer is affirmative, that is, it is included; otherwise, negative; but in such a way that the Ordinary may not extend his jurisdiction over these individuals beyond the realm of ecclesiastical polity and discipline, preserving, with regard to regular discipline and the obligations arising from religious profession, the jurisdiction of the Superiors of the Regular Order, according to number 2 of the aforementioned Instruction. Regarding Sections III and IV of Section II. To Question V. Negative. Regarding the first part, that is, concerning matters pertaining to the Order, negative; regarding the second part, that is, concerning matters pertaining to the churches of the Order, provision has already been made in the sections mentioned in I and II; in other cases, it is necessary to refer to particular circumstances. Regarding Section VII. Regarding those about whom mention was made in question 2, provision has already been made; regarding others, negative, unless they are obligated by a special title to serve the parish church. Regarding Sections VIII and IX, generally speaking, negative; but it is necessary to refer to particular circumstances. Given in Rome, this day, in the Sacred Penitentiary, on the 12th of September, 1872. From which it is gathered: I. That the essence of a Regular Order does not consist in that manner of living by which Regular clergy are obligated to live under one and the same roof and under one domestic discipline. II. That this, however, pertains to the integrity of a Regular Order, which integrity is endowed with numerous rights or privileges by the Holy See. III. Although, if the Regular community is dissolved by force, and that dissolution ceases, the consequences of the rights or privileges will consequently cease.

[*Latin ed. p. 165*]

The legal exercises of certain days, which pertain to a family, are valid for 165 days in their entirety; nevertheless, even if that family ceases to exist in some way, those rights do not cease, provided they can be consistent with the state in which that family is found to have been dissolved due to

Translated by churchlatin.ai, a product of Boyne Archives

violence. I. For indeed, a suppression made by an incompetent authority produces no legal effect whatsoever; although, by accident, the exercise of rights may cease, it is nonetheless necessary that the violent dissolution of the subject to which those rights belonged has occurred. V. For it does not constitute an impediment that which, by law, does not produce an effect, Reg. 32, in 6°. VI. Therefore, if the existence of the subject is in some way determined, the corresponding rights revive; and therefore, in this matter, the Constitutions of Innocent X, *Instaurandae*, of October 15, 1662, and *Ut in parvis*, of February 10, 1654, are rightly invoked. 1 *From the Acts of the Pontiff, in the Consistorial Sessions, of His Holiness, Our Holy Father Pius IX, who, by Divine Providence, Pope, delivered an address on December 23, 1872, to the Cardinals of the Holy Roman Church, in the Vatican.* Venerable Brothers, "The just and merciful God, whose judgments are inscrutable and whose ways are unsearchable, still allows this Apostolic See and the entire Church with it to groan under prolonged and cruel persecution. It is not, indeed, that the situation has remained unchanged, but rather..." 1 *I have indicated what such Constitutions contain, and for what reason they were issued, on pages 28 and following, in Note 2. Also, see the Decree of the Sacred Congregation, which you have in Volume III, page 141.*

[*Latin ed. p. 166*]

Venerable Brothers, our condition, and that of yourselves, has become daily more difficult, especially since our provinces have been subjected to oppression, and particularly since this beloved city of ours has been deprived of paternal governance for more than two years. Experience has taught us, as is fitting from the very beginning, that this was brought about by the machinations of impious sects. We have often stated in our Allocutions that the supreme rights of our civil authority have been so fiercely contested for no other reason than to pave the way for the abolition, if possible, of the spiritual authority by which the Successors of Peter shine, and to destroy the Catholic Church itself, and to extinguish the very name of Christ who lives and reigns therein. This has indeed been clearly demonstrated by the events that have taken place under the Alpine Government; but above all, by those unjust laws, by which either clerics have been driven from the altars and deprived of their immunity, and called to military service, or have been deprived of the means of educating youth. However, now, deprived of our episcopal office, and even more clearly, the same is presented to our eyes. And before our very eyes, or rather, in some places, through insidious schemes, numerous religious families have been violently expelled from their own homes, and the goods of the Church have been subjected to a grievous tax, and subjected to the will of civil authority. Now, a law has been proposed to the so-called Legislative Assembly, not dissimilar to that which, despite our denunciations and most serious condemnations,

Translated by churchlatin.ai, a product of Boyne Archives

has been gradually put into effect in other parts of Italy, and which, even in this center of the Catholic faith, must extinguish religious families, and add the goods of the Church to the treasury and subject them to public auction. Moreover, this law, if it can even be called a law, being so contrary to divine and social law, is far more harmful to Rome and the surrounding provinces. For it wounds the rights and possessions of the universal Church more deeply and acutely, and it attacks the very source of true social worship, which religious families have prepared with immense labor, constancy, and magnanimity.

[*Latin ed. p. 167*]

Allocution 167: "They have not only promoted and completed their work within our own regions, but have also extended it to foreign lands and peoples, enduring hardships, troubles, and even the loss of their lives, and they continue to do so; and thus, they fulfill the duty and right of our Apostleship. For, if Religious Families are suppressed or emptied, and the secular clergy are reduced to poverty and diminished by the demands of military conscription, not only will those who are needed here, as elsewhere, to break the bread of the Word to the people, to administer the sacraments to the faithful, to educate and protect the youth against the countless dangers that are daily presented to them, be lacking; but also assistance will be withdrawn from the Roman Pontiff, who, as universal Teacher and Pastor, requires these resources for the governance of the entire Church. Thus, the spoliation of the Roman Church will consume goods that have been accumulated not only from our donations, but also from the generosity of all Catholics, and which have been established as a center of unity; and thus, what was dedicated to the use and growth of the universal Church will be impiously converted to the profit of outsiders. Indeed, we have recently learned, through ministers of the Subalpine Government, that a monstrous proposal of this kind has been presented to the Legislative Assembly; and on June 16th of this year, we denounced the abominable nature of this proposal in a letter, which we sent to Cardinal N in Etrun, who is in charge of Public Affairs, and we instructed him to inform Our Legates, who are representatives of foreign princes before this Holy See, about this new danger that threatens us, as well as about the other things that we are suffering. But now that the proposed law has been enacted, it is absolutely necessary for us to fulfill our Apostolic duty by reiterating, in a loud voice, before you, Venerable Brothers, and before the entire Church, the denunciations that we have already made, as we are indeed doing. Therefore, we condemn this nefarious act, in the name of Jesus Christ, whose representative we are on earth, with the authority of the Holy Apostles Peter and Paul, and we condemn it along with any and all drafts of laws that seek to arrogate to

Translated by churchlatin.ai, a product of Boyne Archives

themselves the power to act, to harass, and to..."

[*Latin ed. p. 168*]

Decree 168 concerning the suppression of religious families in Rome and the surrounding provinces, and the deprivation of the Church of its property there, and the transfer of that property to the treasury or otherwise. Therefore, we pronounce now that whatever may be done against the rights and property of the Church, we declare any and all acts of plunder to be entirely void, and any acquisition made by whatever title to be null and void, from which this Apostolic See will never cease to reclaim. Let those who are the authors and supporters of this law remember the censures and spiritual penalties which the Apostolic Constitutions impose upon those who violate the rights of the Church; and let them, their souls bound by these spiritual chains, cease to accumulate wrath for themselves on the day of wrath and of the just judgment of God. "Indeed, our grief, which is intensified by these and other injuries inflicted upon the Church in Italy, is further exacerbated by the cruel persecutions to which she is subjected elsewhere; especially in the new German Empire, where not only hidden machinations, but also open force is employed to utterly subvert her. And while men who not only do not acknowledge our most holy religion, but do not even know it, claim the power to dictate the dogmas and rights of the Catholic Church, and while they brazenly assert that no harm is done to them, they do not hesitate to add calumny and mockery to the injury, and they do not fear to turn the fierce persecution of Catholics into a vice; namely, that their prelates and clergy, together with the faithful people, refuse to give precedence to the laws and decrees of the civil Empire over the most holy laws of God and the Church, and therefore refuse to abandon their religious duty. May those who govern the public affairs, finally, be guided by long experience and wisdom, and may they understand that from among their subjects, no one is more devoted to Caesar than Catholics, especially because they strive to give to God what is God's. "It seems that civil authority in some of the Swiss cantons has also embarked on a similar path."

[*Latin ed. p. 169*]

Address 169, concerning either the determination of dogmas of the Catholic faith, or the favoring of apostasy, or the suppression of the exercise of Episcopal authority. In Geneva, although bound by a solemn agreement to preserve and protect the Catholic religion within its territory, after having for several years enacted laws offensive to the authority and liberty of the Church, it has recently suppressed Catholic schools, and has expelled from their religious orders and deprived of their teaching duties those belonging to institutes dedicated to that purpose; and most recently, it has sought to abolish the authority which the Venerable Brother

Translated by churchlatin.ai, a product of Boyne Archives

Gaspar, Bishop of Hebron, has legitimately exercised there for many years, and to deprive him of his parochial benefice; indeed, it has even gone so far as, through public incitement, to invite and encourage the citizens to subvert the ecclesiastical order in a schismatic manner. "The Church also suffers greatly in Catholic Spain from the civil power. We have learned that a law concerning the clergy, recently proposed and now ratified by the Legislative Assembly, has been enacted, which not only violates solemn agreements, but completely disregards every standard of right and justice. This law, which aims to increase the poverty and servitude of the clergy, and to exacerbate the evils inflicted upon that illustrious nation in recent years to the detriment of the faith and ecclesiastical discipline by a deplorable series of actions, has, as the just and firm complaints of the Venerable Brothers, the Bishops of Spain, have clearly demonstrated, provoked our present expressions of concern. "Furthermore, it is necessary to mention the deplorable and most impudent actions of the Armenian schismatics, who, especially in Constantinople, strive to oppress a much larger number of those who remain steadfast in their faith and office, through audacity, fraud, and violence. Indeed, under the false name of Catholic, they persist in their perfidy against our supreme authority and their legitimate Patriarch, who, having been driven out by their machinations, was forced to flee to us. Through their deceptions, they have also gained access to the civil power."

[*Latin ed. p. 170*]

"Furthermore, despite the efforts of Our extraordinary legates sent there to resolve matters, and even the letters We sent to the most serene Turkish Emperor, some Catholic churches have been forcibly converted to their own use, assemblies have been held within them, and a schismatic Patriarch has been established, and they have brought it about that Catholics are deprived of the immunity they have hitherto enjoyed under public agreements. "But concerning the aforementioned vexations of the Church, We may perhaps have to explain matters more fully in the future, if Our most just warnings continue to be disregarded. "However, amidst these causes for sorrow, We rejoice, Venerable Brothers, that you are able to find solace, as We ourselves are strengthened, by the admirable constancy and diligence of the Catholic episcopate of the aforementioned regions, as well as of others; whose prelates, girding their loins with truth, and clothed with the armor of justice, and most devoted to this See of Peter, are not deterred by any dangers, nor disheartened by any troubles, but, whether individually or together, with voice, with writing, with remonstrances, with pastoral letters, vigorously and bravely defend the Church, this Holy See, and their sacred rights, together with their clergy and faithful people; and they restrain unjust force, refute calumnies, expose conspiracies, break the audacity of the wicked, show the light of truth to all, encourage the righ-

Translated by churchlatin.ai, a product of Boyne Archives

teous, and oppose the firm strength of united solidarity against the incursions of enemies from all sides, and they offer us the most pleasing comfort and powerful aid amidst all the evils afflicting the Church. This, indeed, will certainly become even more effective if efforts are made to strengthen the bonds of faith and charity, by which minds are united and affections are joined, more and more each day. Moreover, no one should consider it inopportune that those who, by metropolitan authority, preside over ecclesiastical provinces, should confer with their suffragan bishops, in the best way possible, through consultations that can be carried out with the passage of time, so that all may be bound together in the same mind and the same sentiment, and may prepare themselves with united effort for the difficult struggle against the audacity of impiety."

[*Latin ed. p. 171*]

Allocution 171: "Indeed, Venerable Brothers, the Lord has visited us with His sharp, great, and mighty sword; and the smoke of His wrath has ascended, and fire has gone forth from His countenance. But will God forever cast us down, or will He not perhaps become even more merciful? Far be it. For the Lord does not forget to have mercy, nor does He restrain His mercies in His anger; but He is abundant in forgiving, and He is gracious to those who call upon Him in truth; He will pour forth upon us the riches of His mercy. Let us strive to appease the divine wrath during this acceptable time of the coming of Dominic; and let us humbly meet the peaceful King, who is about to come to announce peace to men of good will, walking in the newness of life. O just and merciful God, whose we are, and who sees the contrition of our people and the contrition of the holy city, and who sits there when it is given into the hands of our enemies, may He incline His ear and hear; may He open His eyes and see our desolation and the city over which His name has been invoked." FROM THE AUDIENCE OF THE MOST HOLY FATHER, CONCERNING THE NEW SMALL SCAPULAR OF THE HOLY HEART OF JESUS. SUPPLICATING PRAYERS. "Most Blessed Father, Cardinal Paulus Cullen, Archbishop of Dublin, presents to Your Beatitude, as is fitting, the faithful in Hibernia, Anglia, and elsewhere, who for some years have been accustomed to wear a small image of the Sacred Heart of Jesus, depicted with white wool, or attached to it with wool, hanging from the neck over the chest, in the manner of a small scapular, and with these words printed in the vernacular: "Cease; the Heart of Jesus is with us." The Orator, in order to increase the devotion and trust of the faithful towards the Most Holy Heart of Jesus, addresses Your Beatitude..."

[*Latin ed. p. 172*]

Regarding the new small Scapular of the Sacred Heart, We earnestly request that you deign to grant some indulgence to those faithful who, as mentioned above, devoutly wear said image. October 28, 1872. We benignly

Translated by churchlatin.ai, a product of Boyne Archives

grant the indulgence of one hundred days, once a day, to the faithful of Christ who carry the aforementioned sign, reciting a pious prayer, namely, the Our Father, the Hail Mary, and the Glory Be.

RESCRIPT WRITTEN BY THE HOLY HAND. PIUS PP. IX. This Rescript, written by the Holy Hand, was presented in the Secretariat of the Holy Congregation for Indulgences on this day, December 18, 1872, in accordance with the Decree of the same Holy Congregation of April 14, 1856. In witness whereof, etc. DOMINICUS S ARRA, Substitute.

APPENDIX II. The opinion of the Eminence, Vicar of the City, in the case concerning the worship rendered from time immemorial to the Servant of God, Pope Eugene III, the Blessed.

To confirm what we have previously stated based on the information from the Advocate in the case of Eugene III, we reproduce in full the opinion previously given by the Ordinary, which is as follows:

ROME. Concerning the worship rendered from time immemorial to the Servant of God, Pope Eugene III, the Blessed.

Invoking the name of Christ, we, seated in judgment and with God alone before our eyes; in the case concerning the worship rendered from time immemorial to the Servant of God, Pope Eugene III, the Blessed, or concerning the case excepted from the decrees of the blessed and venerable Pope Urban VIII, published in the Most Holy Inquisition: Having examined the testimonies of witnesses before the Most Illustrious and Reverend Lord William Sillani, formerly Bishop of Terracina, appointed by us as Judge, with duly sworn and examined witnesses, and without infringing on any rights in the same process, and with legitimate expertise both regarding images and regarding...

[*Latin ed. p. 173*]

Appendix II 173. Having been compiled into codices, and having been preserved, after having been examined by the constitution and the deputation of the Postulator, and after having considered the entire process, it is evident:

I. That the Servant of God, Eugenius III, after a life replete with every virtue, entered the way of all flesh at Tibur on the eighth day of July in the year one thousand five hundred and thirty-three; and that immediately after his death, the fame of his sanctity grew, and that his body was, with great solemnity and the throng of the people, carried to the City, and that his funeral rites were celebrated for two days by the clergy and the people, as Hugo, Cardinal of Ostia, writes, so that one might believe that he who was buried on earth, already reigned in heaven.

II. That, after due investigation, his body was placed in a sarcophagus, together with that of Saint Gregory III and the Blessed Peter the Levite, and that it was treated with the same reverence.

Translated by churchlatin.ai, a product of Boyne Archives

III. That immediately after his death, miracles began to occur, and that, therefore, a great throng of people gathered at his tomb, together with public demonstrations of veneration, which were observed and not contradicted by the Roman Pontiffs who succeeded him.

IV. That Peter Mallius, a contemporary of Eugenius III, and Canon of the Basilica of the Vatican, in his history of the same Church, in the section concerning the Saints who rest there, wrote a chapter about the Blessed Eugenius III, and followed him with many praises; and that Geoffrey, a monk, also a contemporary, in his commentary on Saint Bernard, who died in the same year and month as Eugenius, honored this Pope with the title of "Blessed," and commemorated his holy life and the miracles that occurred after his death.

V. That, besides the praises of his sanctity, with which this Pope was honored by an anonymous author of the Life of Alexander III, by Gerhou Monachus, and by Bernard of Bonaval, Saint Thomas of Canterbury, Alan, Bishop of Antisiodorum, and John of Salisbury, all contemporaries of Eugenius, and many members of the monastic life, called him "Blessed."

VI. That in the middle of the thirteenth century, Vincent of Beauvais, in his most celebrated work, called the "Bibliotheca Mundi," honored this Pope with the following most excellent praise: "Pope Eugenius, a cultivator of justice and a lover of piety, whose merits shine in the very City... illuminated by many miracles."

VII. That in the fifteenth century, besides Wernerius of the Carthusian Order, who honored Eugenius III with a very weighty eulogy, Hermannus Cornerius and John, Abbot of Cîteaux, called him "Blessed" or "Saint"; and furthermore, in the work entitled "Privilegia Ordinis Cisterciensis," at Divione, in the year one thousand four hundred and ninety-one, in the catalog of Saints and Blesseds of the same Order, it is also written: "Bernard, and afterwards Eugenius III, Pope."

[*Latin ed. p. 174*]

174 Appendix II VIII. That the body of Pope Eugene III, during the same fifteenth century, was still interred in the same tomb, together with Saint Gregory the Third and Blessed Peter the Levite, and that it was not removed until the year 1557, due to the construction of the new Basilica, and that its location is now scarcely known, just as is the case with the remains of some other Saints, resting in the same temple.

IX. That when the images of the Saints and Blesseds of that city were depicted in a codex in Pisa, between the years 1500 and 1520, the first of all was that of Pope Eugene III, with his head surrounded by rays.

X. That in the monastery of Altova in Bohemia, around the year 1550, another image of Eugene III was painted, with a halo and a blessed inscription.

Translated by churchlatin.ai, a product of Boyne Archives

XI. That the editors of the works of Saint Bernard, publishing his life written by the monk Geoffrey, left the entire eulogy attributed to Blessed Eugene III intact in all editions of that century that have been found, namely the Lyons edition of the year 1534, during the pontificate of Urban VIII, another similar Lyons edition of the year 1538, the Basel edition of the year 1552, the Venice edition of the year 1575, the Paris edition of the year 1606, and also in the collection made by Surius in the year 1599; this life was read both privately and publicly, especially by monks.

XII. That in the Missal for the use of the Holy Order of Cîteaux, published in Paris in the year 1556, in the catalogue of Saints and Blesseds of the same Order, appended at the end, it is written among the others: "Bernard of Clairvaux, monk, later Abbot of Saint Anastasius, finally Eugene, Pope the Third."

XIII. That from the year 1580 to the year 1610, a large altar, constructed with admirable craftsmanship from wood, was built in the Cistercian temple of Altova, and two wooden statues were placed there, as ornamentation, one representing Saint Bernard, and the other Eugene the Third, as can be seen from the pontifical vestments, and with two doves placed above them, as is customary to depict this Pope.

XIV. That not only Barnabas de Montalvo in the year 1612, and Robert Rusca in the year 1618, but also Chrysostomus Henriquez in the year 1624, refer to his miracles, and furthermore, the calendars, menologies, or martyrologies of the Order of Cîteaux, compiled in the years 1617, 1629, and 1630, mention him on the eighth day of July, concerning Pope Eugene the Third.

[*Latin ed. p. 175*]

Appendix II 175: They mention that in Rome, the remains of the Blessed Eugene III, Pope, are deposited; and that the words of the Menology, or Martyrology, concerning him have been customarily recited annually by the Cistercians, either in the choir or in the refectory.

XV. That, even after the completion of a hundred years, the name of Eugene III, or references to him, are frequently found in the Menologies or Martyrologies, or in the list of Saints and Blesseds of the Cistercian Order, or of the city of Pisa; namely, that in the seventeenth century, in a manuscript codex in the Sessorian Library, and in a copy of a Cistercian Martyrology presented by the Bollandists, as well as in the Gallican Martyrology of Andrea Suassy of the year 1637, in the works of Angelus Manrique of 1642, Gabrielis Bucellini of 1645, Claudius Calemont of 1670, Petrus Cardosii of 1675, Paulus Trunci of 1682, and furthermore, that according to Ferdinand Ughellio, in 1677, and by Natalis Alexander in 1683, Eugene III is considered a Saint in the Cistercian list of Saints and Blesseds.

XVI. That in the same seventeenth century, images of Eugene III were

Translated by churchlatin.ai, a product of Boyne Archives

depicted in the Osseken Monastery in Bohemia, in 1655, and towards the end of that century, in the Runen Monastery in Styria, either in metal or in painting, adorned with symbols of sanctity and with laudatory inscriptions; and towards the end of the same century, other images of Eugene were cast in bronze, some of which are still reverently preserved by Cistercian nuns in their breviaries.

XVII. That at the beginning of the eighteenth century, an image of Eugene III, adorned with the title of Blessed, was depicted among other Saints and Blesseds in the sanctuary of the Church of the Blessed Virgin of Consolation in Turin, and it still exists; and in the middle of the same century, another was depicted in the monastery of Saints Vincent and Anastasius at Aquas Salvias, another was cast in bronze with elegant inscriptions, which are often used by the Cistercians; and finally, towards the end of the century, a fourth was depicted on a tapestry in the cathedral of Pisa.

XVIII. That in the same eighteenth century, Eugene, Pope III, is considered Blessed in the Cistercian Martyrology, and witnesses to this are Josephus Martini in 1715, Pagius in 1729, Gravesonius and Guido Forti in 1731, Franciscus Orlendi in 1732, Guido Grandi in 1742, Petrus Mugugnotti in 1744, Franciscus Iosephus Samminiatelli in 1745, an Anonymous Author in the collection of Illustrious Men of Pisan, in 1791, and even Mabillon himself testifies - to his Beatitude... miracles confirmed it.

[*Latin ed. p. 176*]

176 Appendix II XIX. Whereas, during this century, besides the image of the Blessed Eugene III displayed in the Temple of Saint Donnin in Pisa, which was said to have been used as the likeness of the Blessed by Pope Novaes in the year 1821, by Canon Benincasa in the year 1842, by Henry Vallancoli in the year 1843, by Philip Becchetti in the year 1847, by Theodore of Ratisbon in the year 1853, by Joseph Sainati, the author of the life of this Pope, in the year 1868, and then officially as a witness, and finally in the year 1869 by Abbot Gabriel in his history of the Territorial Abbey of Santi Vincenzo ed Anastasio alle tre Fontane. XX. Furthermore, that more of the aforementioned signs of public veneration still persist; for all the aforementioned images are still preserved in their respective places, as seen and without contradiction by the Ordinaries. The monks of Cîteaux observe the commemoration of the Blessed Eugene on the eighth day of July in each of their monasteries, either in the choir or in the refectory; and in the pious letters which they recite among other Saints and Blesseds, Pope Eugene III is also mentioned. Having seen and examined: in the name of Christ, repeating what has been said, we declare, we decree, we pronounce, and we definitively judge that public and ecclesiastical cult has been rendered to the Servant of God, Eugene III, the Pope, who is called Saint and Blessed, from time immemorial, and that it has never been interrupted, but still endures; therefore, it is established that this case is excepted from the Decrees

Translated by churchlatin.ai, a product of Boyne Archives

of the blessed memory of Pope Urban VIII. And so we declare, we decree, we pronounce, and we definitively judge, not only with the foregoing, but also with all other suitable means and forms, as is right. Thus I pronounce, I, CONSTANTINE, Cardinal Vicar.

[*Latin ed. p. 177*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT, CONCERNING FUNERALS. February 24, 1872. Summary of the case. In the Subalpine government of Italy, a question arose in the year 1870 concerning the burial of a body in all secular and regular churches, specifically between the chaplain of a monastery and the local parish priest – regarding the right of associating a certain body with the common cemetery. The controversy was resolved by the Vicar Capitular, who decreed that, for that occasion, the chaplain should associate the body. However, in order to prevent such questions in the future, letters were sent by the Holy Congregation, requesting that the following doubt be clarified: and it was proposed as follows: "This Holy Congregation of the Council, on January 24, 1846, decreed that Regular clergy, wearing their habit and carrying a cross, may, without the intervention of a parish priest, carry the body of a deceased person to the common cemetery, provided that, according to civil law, the body cannot be buried within the monastery, and that it be carried to the cemetery directly, without any solemn ceremony. Therefore, it is asked whether this decree can also be extended to female religious of diocesan orders, subject to the jurisdiction of the diocese, so that their bodies may be carried, without the intervention of parish priests, by the chaplains of the monasteries, with a moderate funeral, to the common cemetery." A response was sent to the Vicar Capitular, instructing him to hear in writing both the chaplain of the nuns and the local parish priest, as well as the fiscal procurator, who defends the rights and interests of the other monasteries and parish priests. Acts, volume VII, section LXXVI, pages 12 and following.

[*Latin ed. p. 178*]

Funerum 178. The parish priests, through their Capitular Vicar, responded that they could not claim any authority, nor did they possess any right, over the monasteries of nuns, since these were exclusively subject to the archiepiscopal jurisdiction; therefore, they awaited the resolution of the Holy Congregation. The chaplain of the nuns presented certain decrees and authorities. The fiscal advocate for the monasteries also expressed his opinion. These matters having been received, a decree was drawn up and placed in the files of the Holy Congregation. The cause was then restricted, according to the usual procedure, so that it could be presented to the Holy Congregation, from which we have derived all of this.

A concise summary of the arguments.

Translated by churchlatin.ai, a product of Boyne Archives

THE RIGHTS OF PARISH PRIESTS. It has been established, by virtue of office, that the parish priest possesses the exclusive jurisdiction within the boundaries of his parish: these parochial rights are manifested, for example, through the carrying of the stole in funeral processions, which pertains solely to the parish priest, as Monacell, title 10, formula 18, number 4, and title 13, formula 1, number 7, and Pigliateli, consult. ?j r num. no, volume 8, attest. Similarly, the elevation of the cross pertains only to the parish priest, as Pignatell, ibid., number no, indicates; and since these two ceremonies are prescribed in the Roman Ritual for the association of the deceased, it follows that the chaplains of the nuns cannot perform them outside the monastery walls, lest they appear to be infringing upon the rights of the parish priest: therefore, the association of the deceased nuns outside the monastery walls pertains to the parish priests. This is confirmed by analogy with the law concerning funerals; and also by the fact that, according to the regulations, it is forbidden to carry funerals through streets and public places for pious reasons, I. 6, de funeribus, chapter 3, number 8. Petra, commentary on the constitution of Innocent III, constitution 5, number 1. Furthermore, it is forbidden to the superiors of the monasteries, even in the absence of the parish priest, to exercise parochial jurisdiction, even over those outside the monastery walls, as Amostaz reports.

[*Latin ed. p. 179*]

Funerals are to be conducted in such a manner that, outside the cloister, the sacraments may be administered to the ailing Religious by a superior Religious, as is stated by the Resolution of the Holy Congregation of the Council in a certain document from Cologne, April 21, 1609, as cited by Petra, loc. cit., n. 13, and by Pigliateli, consult, op. cit., n. s, vol. 4. Therefore, when delivering corpses to the parish priest, it is fitting to indicate the route to be taken to the entrance of the Religious's church, where the deceased is to be buried, as stated by Ferraris, in the Bibliotheca Canonica, under the word "Parochus," article 3, n. 31. Furthermore, since it is not permitted for parish priests to enter the churches of the Religious with a stole and crucifix raised, but rather they must conclude their prayers at the door of the church and give the final blessing there, as is evident from a certain cause from the Canary Islands, discussed before the Holy Congregation of the Council on July 21, 1694; and since burials are now prohibited in the Religious's own churches, it seems appropriate that the corpse should be delivered to the parish priest at the door of the church, so that he may transfer it to the common cemetery. It is also fitting that what was noted in a certain document, "Iura Parochialium," December 20, 1828, § Animarum, with these words: "Since there is nothing with us other than a common cemetery, to which access is not permitted except through the boundaries of the parish, therefore the proper burial is to be performed by the parish priest, and only the Chapter is concerned with the celebration of the funeral

Translated by churchlatin.ai, a product of Boyne Archives

office over the body in the cathedral church." It does not appear that the aforementioned Resolution of 1846 presents any difficulty, since it concerns a particular case and the Order of Preachers, who are endowed with many privileges, and it cannot be applied to similar cases.

RIGHTS OF THE CHAPLAIN OF RELIGIOUS SISTERS. The chaplain of Religious Sisters affirmed that the Resolution given in the year 1846 is a law common to all Religious living in community, and to support this assertion, he cited the authority of Scavini, who, in vol. 4, appendix 8, wrote: "When a Religious is unable to be buried in the convent (notwithstanding, for example, civil law), the Religious may carry the corpse to the common cemetery with a stole and crucifix."

[*Latin ed. p. 180*]

Funerum 180: "A body, without the intervention of a Parish Priest, may be transported to the cemetery, provided that it is carried there without solemn ceremony and in a straightforward manner." However, it must also be considered that such a law should also apply to religious women, according to the rule of law, since where the reason is the same, the legal provision should also be the same. And indeed, the Canon continued, a Religious or Regular [person] is "a person who, having made three solemn vows, lives according to a religion approved by the Church." Ferraris Regularis, art. i, n. 5: but these are religious women, therefore, no one doubts that they also fall under the term "Regular." And therefore, he said, all laws enacted for Religious should also apply to them. Furthermore, as stated by Benedict XIV in a document dated [date unspecified], in which the acting Pope spoke of the manner in which proceedings should be conducted in cases concerning the nullity of vows, he said: "All that has been decreed concerning Religious men should also be understood to include women, where the same reason applies." And Ligorius, following the footsteps of Doctors and Canonists in Vol. 4, chap. i, on the state of Religious, no. 2, wrote: "Religious women are capable of enjoying the same privileges as Religious men, pertaining to their order. The reason is that, since they live according to the same rule, they are part of the order, and therefore they deserve to enjoy the privileges of the order. And this is so even if the privilege expressly states that it is granted to men or males, and even if religious women are subject to a Bishop, they hold [Salm.]", etc. However, in the aforementioned Resolution of the Sacred Congregation, it was stated that it is permitted for Regular [clerics] to transport the body of a deceased Religious to the common cemetery without the intervention of a Parish Priest: therefore, it must also be said that it is permitted for the chaplains of religious women to do the same. Furthermore, it was noted that monasteries are exempt from the jurisdiction of the Parish Priest, both locally and personally, and are considered to be like parishes; therefore, the chaplains of these monasteries should be approved by the Ordinary as if they were Parish Priests, not as

Translated by churchlatin.ai, a product of Boyne Archives

superiors of the Regular [clergy] for Religious men; Ferraris, under the word "Monialium," art. i, n. 61, where, citing the authority of others, he states: "The confessor of religious women, although not called a Parish Priest, in the matter..."

[*Latin ed. p. 181*]

181. "However, the Chaplain is a Parochial minister, and by his office, he has the same care for the souls, both of the religious and of the secular, as if he were the Parish Priest. Moreover, Bordonus, in Miscellanea, 128, adds: 'It pertains to him to complete the funeral rites, and it belongs to him to begin the same funeral rites; but the beginning of the funeral rites, and the removal of the bodies from the monastery, pertain only to the Confessor, because no one, except for him, has the right to do so there, since the place is entirely exempt from parochial jurisdiction.' Therefore, just as a Chaplain of nuns, acting as a Parish Priest, is permitted to go beyond the boundaries of his own parish, and to carry the bodies of the deceased to the common cemetery of the parishioners, without consulting anyone, so, for the same reason, it can be said that the same Chaplain of nuns can do the same. These arguments presented by the Chaplain of nuns have been further confirmed by his office. Indeed, it has been observed that the functions of the Parish Priests are their own, as Clement, in *Dudum de sepult.*, and generally the authors, state; so that, in cases of doubt, one must answer as if addressing Parish Priests, as Benedict XIV wrote in *Instruct. eccl.*, 103, § 3: 'For the Parish Priest has a right founded in law.' But it must also be considered that the Confessor of the nuns, within the monastery walls, is to be considered as a Parish Priest, since, by privilege of exemption, the monastery is exempt from all parochial jurisdiction. Thus, as Gr. Samuel, in *de sepult.*, tract. i, concil. 2, writes: 'Monasteries enjoy the privilege of parochial jurisdiction within which they are built, granted to both sexes, to all the Religious; the Confessor is usually considered to be the one who, as a Parish Priest, performs all the rites of burial, but by the administrator.' Hence, the Holy Roman Congregation responded in a case of doubt: 'Since the nuns are exempt from parochial jurisdiction, the funeral rites must, therefore, be performed by the Confessor, and not by the Parish Priest, as was decided in Camerino on March 16, 1808; in response to the question: 'Does the Confessor of the nuns have the right to perform the funeral rites over the bodies of the nuns? Or does this pertain to the aforementioned Chapter?' the response was: 'The celebration of the funeral rites pertains to the Confessor for the time being.' Also, the Holy Congregation of Bishops and Regular Canons, in Tranen, on May 30, 1856, decided..."

[*Latin ed. p. 182*]

The cause of this dispute concerning funerals was as follows. The Archbishop of Tione had decreed in the city of Barletta that the association of

Translated by churchlatin.ai, a product of Boyne Archives

the bodies of those who died within the confines of monasteries should be performed by the Confessor, and not by the local parish priest in the place where the monastery existed. The Chapter protested, claiming that, from time immemorial, they had held and constantly exercised the right to transport the bodies of the nuns from the gate of the monastery to the external church of the monastery itself; a custom which they sought to prove, at least from the year 1681 until the year 1849. The matter, being a doubtful question before the Sacred Congregation, and the Royal Court, "Whether the association of the bodies of the nuns and the celebration of the funeral rites pertain to the Confessor, or whether the custom regarding the association should be observed; and in the remaining matters, whether it pertains to the Confessor." With the defender present, a response was issued: concerning the monastery and the case being re-presented under the doubt: "Whether one should adhere to or depart from the decisions in the case," the Sacred Congregation responded: "In the decisions, provided that the customary invitation regarding the association is made beforehand, and furthermore." However, the Archpriest of the Chapter, demanding a declaration regarding the given resolution, maintained that he had the right, not only to the association, but also, by law, that the parish priest also had the right to celebrate the same funeral: for he argued that, if the association of bodies had been permitted by custom, then the same funeral association should be understood to be formally binding on the Archpriest as a parish priest; especially since the Confessor of the nuns had no right over those things which were done outside the church and the monastery. Therefore, this petition was reported to the Sacred Congregation on September 17, 1858, and a response was issued: concerning the alleged rights of the Archpriest as a parish priest, negatively. And, with regard to the association of the bodies of the nuns by the Confessor, up to the place of burial outside the monastery, the authority of Samuelis, who in the aforementioned work, controversy 16, conclusion 5, wrote: "A nun, if she chooses, by special papal grace, to be buried outside the monastery, her Confessor ought to associate her body up to the burial place, and to bury it there, and to perform the office over it."

[*Latin ed. p. 183*]

183. "However, [a nun] should be buried either outside the regular houses of her order, or in other places where the right of burial exists. In such cases, it will be the duty of those who have the right of burial in those places to perform the offices and to provide for the burial. For in such a case, the Confessor of the nuns does not lose the right to accompany the body until the burial; and if she is buried in a place where the right of burial does not belong to him, then the ecclesiastical authorities will be responsible for conducting the funeral in all respects; otherwise, she must be treated like the other members of the parish, who are associated with

Translated by churchlatin.ai, a product of Boyne Archives

the funeral and do nothing in the regular churches, but the other funeral rites are performed by the regulars themselves; for the Confessor is the proper parish priest of these deceased nuns, and therefore it is his duty to perform the parochial duties concerning her." The same is stated by Scarfantonius, volume 3, addition 48, number 5, concerning a woman who has been placed in a monastery for life; he wrote: "This woman, because she can choose where she will be buried, if she is to be buried elsewhere, must be associated with the Confessor of the monastery, and the fourth part of the funeral expenses and other parochial rights are due to him, for this single reason, because this woman has become one of the flock of the Confessor, and she received the sacraments from him while she was alive." The same is repeated by Pelizar, concerning nuns, chapter 10, number 233; Capon, volume 4, discussion 133, numbers 73 and 74. However, there is no difficulty in this, because nuns are subject to the jurisdiction of the Ordinary; for this reason, the aforementioned reasons do not change; nor do these reasons change because of public and common cemeteries, which do not change the rights of burial; since only the material place of repose has been changed for the sake of public health, as has been decided many times. With these and other considerations, the question is to be resolved: "To whom does the association of the body of nuns belong in this case?"

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the case on February 24, 1872, judged it appropriate to respond affirmatively in favor of the Confessor.

[*Latin ed. p. 184*]

184. Funerals are to be conducted, provided that the body is carried with a pall and a cross, but without pomp and with a direct route to the cemetery. From the common law: I. It pertains to the parish priest, by private right, to administer the sacraments within the limits of his parish, except for legitimate exemptions or customs. II. Also, by private right, it pertains to the parish priest to conduct funeral processions for those who have died within the limits of his parish, except for legitimate customs.

1. Monasteries of nuns, like those of other religious orders, are exempt from parochial jurisdiction.

2. What are the proper and exclusive rights of the parish priest, which are currently in force, are indicated by Monacelli in his Formulary, title 10, form 18, no. 4: "Today, the private functions that belong to the parish priests and which are still observed are reduced to a few: 1. To carry the pall in shoulder processions; 2. To bless houses on Holy Saturday; 3. To collect tithes; 4. To administer the sacrament of the Eucharist during Easter and in times of illness, even for canons of cathedrals; 5. To retain the key to the tabernacle and the things that belong to the sacraments; 6. To bless the betrothed and the bodies of the deceased before they are removed from the house; 7. To announce marriages, excommunications,

Translated by churchlatin.ai, a product of Boyne Archives

and indulgences. These, I say, can only be exercised and performed by the parish priest or with his permission." Thus, Monacelli, who confirms these things with various authorities. But although these are the proper and exclusive rights of the parish priests, they are often limited by legitimate customs, prescriptions, conventions, exemptions, and synodal statutes. Compare, if you wish, the case of the Oratory of January 27, 1866, which you have on page 509 and following, and other similar cases in volume I, pages 582 and following, and 161, and in volume III, page 127, and elsewhere. For example, with regard to the carrying of the pall, although Monacelli, with Pignatelli, argues that it is a private right of the parish priest to publicly carry it throughout the parish; nevertheless, he notes that another custom prevails in Rome. He wrote in the aforementioned place, title 13, form 1*, no. 77: "The carrying of the pall implies jurisdiction, as Samuel says in 'De sepult,' tractate 1, disputation 3, contradiction 7, no. 9, and disputation 4, contradiction 12, no. 12, 'which simple priests and chaplains do not have, and therefore they should not carry it outside the churches of confraternities, as is proven by the Decrees of the Digest, consulted by Pignatelli, 73, no. 1, volume 8,... to which the custom of the city does not stand in the way, in which chaplains of confraternities often carry the pall in funeral processions, because this comes from a concession of the Statutes of the Roman Clergy.'"

2. The question is raised, whether all persons are exempt from parochial jurisdiction, those who are within the walls of monasteries, whether of nuns or of religious orders.

[*Latin ed. p. 185*]

Funerals 185* IV. Therefore, the one who has charge of the souls of the nuns ought to be considered as their proper Parish Priest, and only those parochial effects apply to them which do not, and do not harm, the local Parish Priest's rights. V. Among such parochial effects, the funeral rites of a deceased nun are prohibited from being performed elsewhere, and the funeral celebration of the body is to be held. This question has been treated in part in the case of the Seminary, which I explained in Vol. III, page 47; but it has not been legally resolved. Regarding those who are educated in nunneries, Ferraris wrote in *Biblioth. can.*, under the word "Nuns," article 1, paragraphs 61 and 62, citing various opinions, and finally concludes: "Those who are being educated and die should be buried in the parish, unless they have a family burial plot; and if they choose to be buried in the nunnery, they may be buried there, but they must pay the fourth part of the funeral expenses to the Parish Priest." However, the general rule, as it seems to me, from which to determine which persons are exempt from parochial jurisdiction among those who live with the Regulars, is to be taken from chapter 11, session 24 of the Council of Trent, concerning Reform, namely, from these words: "Except, however, those who actually

Translated by churchlatin.ai, a product of Boyne Archives

serve in those places and reside within their walls and houses, and live under their obedience." All of these things must concur, as declared by Gregory XIII in the Constitution *Circumspecta* of November 25, 1580, which I quoted in Vol. VI, page 493, § Cui. Such persons enjoy the same exemption as the Regulars. Others also add chapter 11, session 25, concerning the Regulars. See Ferraris, *loc. cit.*, n. 61. I said only those parochial effects apply to them which do not, and do not harm, the local Parish Priest's rights, because the law of enclosure is an obstacle. On this matter, there exists the Constitution of Alexander VII, *Felici*, issued on October 20, 1664, for Italy and the adjacent islands, which in § 6, states: "Furthermore, the Confessor of the nuns, whether ordinary or extraordinary, may not enter the nunnery, except to administer the sacraments of Penance, Eucharist, and Extreme Unction to the nuns, or to other sick persons residing there, nor also to commend the souls of the dying, and he must never enter except with a companion who is of proven life and mature age, and who must always remain in that part of the nunnery where the Confessor can be seen and where he himself can be seen." And the Resolutions of the Sacred Congregation are also cited, which declare: "It is not permitted for the Confessor to enter the nunnery under the pretext of burying the body of a nun, or of performing the funeral rites, but this office, if the burial is to be within the enclosure, must be performed by other nuns, or by two workers approved by the Ordinary": as the Sacred Congregation responded in Rieti on March 10, 1577. If the nun is to be buried in an outside church, "the nuns must carry the body up to the gate of the enclosure." See *Collectait. Emi Card. Bizzarri*, page 704 and 705, in the note, in which the Constitution of Benedict XIV, *Salutare*, of January 3, 1742, is also mentioned, where it is said that Ordinaries have the power to permit.

[*Latin ed. p. 186*]

Funerals, 186, V, I. Therefore, if the burial place is distant from the monastery, the parish priest cannot prevent the funeral procession of the body, as long as the parish priest cannot ascertain that a right has been violated. VII. It is considered a violation of the rights of a deceased nun if her body is taken to a parish cemetery or a common cemetery by her own chaplain, without a solemn procession, with a stole and a cross, whenever it is not customary to carry the bodies of the faithful without such solemnity. Entry into monasteries of nuns is permitted "only in necessary cases and with other legally permissible reasons, and in no other way whatsoever." Thus, also: "Confessors, and others, cannot enter the enclosure of nuns to 'sprinkle the cells of the nuns, or other places, with blessed water on the Sabbath day or at any other time,'" as the Holy See decreed in Arezzo on September 4, 1590. The clause without a procession might, at first glance, seem inconsistent with the Roman Ritual, title on funerals, in which it is written: "The parish priests must observe

Translated by churchlatin.ai, a product of Boyne Archives

and maintain with the utmost care the sacred ceremonies and rites, by which the Holy Catholic Church, according to the most ancient tradition and the institutions of the Supreme Pontiffs, signifies the mysteries of Christian piety in the funerals of her children, and offers the most salutary prayers for the deceased faithful. Since the most ancient ecclesiastical rites include the lighting of candles at funerals, let them take care not to omit such rites." Several resolutions, as indicated by Petra in the Constitutions, ninth of Innocent III, n. 10, condemn the custom of burying the deceased privately, without candles, a cross, and a priest, as an abuse, and even more so, the abuse of carrying the dead in closed carriages to churches. But this disposition of the Ritual refers to the custom that previously prevailed throughout the Catholic Church of carrying the bodies from houses with a funeral procession in order to take them to the temple, where they were to be buried and where the funeral services were held; it does not refer to the case of a second transport of bodies to the cemetery, which is often done in a private manner, even in Rome (where, however, the common cemetery is quite distant). However, the custom is to be praised, where it prevails, of carrying the deceased to the common cemetery with a funeral procession, as, for example, in Kosso, as I wrote in volume V, page 221 and following; for it would be very consistent with the ecclesiastical rite. But everyone can easily see, in the matter we are discussing, that if the bodies of nuns are carried in public to the common cemetery (to which, with some exceptions, a solemn procession also seems to be opposed, due to the poverty to which the religious are subject), then parochial rights are involved: for solemn funeral processions cannot be held without the intervention of the parish priest, in whose parish the body is taken, except for customs that have a great influence in matters of funerals. How the words "without a procession" should be understood in the present resolution, I will explain in the following Appendix III. 1.

[*Latin ed. p. 187*]

Funerals 187 VIII. It is finally decided that the present Resolution should be considered a general norm, following the constitutions of the common cemetery. APPENDIX III. Concerning the relationship between the rights of Parish Priests and Religious Orders with regard to the burial of deceased Religious in the public cemetery. In the preceding case concerning funerals, we discussed the funeral association of deceased nuns for the common cemetery: namely, it was disputed whether the funeral procession of the nuns should be led by the nuns' chaplain or confessor, or rather by the Parish Priest. A similar case was discussed in the Sacred Congregation of Rites on January 24, 1846, which bears the title "Concerning the solemn association of the bodies of the Preachers." Since this case has a similar outcome, it seems worthwhile to refer to it in its main points, as it clarifies and strengthens the matter from both sides. SUMMARY OF THE FACTS.

Translated by churchlatin.ai, a product of Boyne Archives

In the year 1839, a law concerning common cemeteries was enacted in the Neapolitan territory. A Dominican family residing in Taranto, using their own funds, constructed a tomb for themselves in the common cemetery. However, in the year 1841, a dispute arose between them and the Metropolitan Chapter (which has the care of the souls of the entire city) regarding the burial of the bodies of Religious in the cemetery: when certain deceased Religious, after proper funeral rites in the church, intended to carry the remains to the tomb, the Fathers of the Dominican Order, without the intervention of the Parish Priest, raised the crucifix of the convent. The Chapter opposed this, arguing that the funeral procession should be led by the Parish Priest with the parish crucifix. This dispute was temporarily resolved, with certain rights reserved, allowing the dispute to be brought before the competent tribunals. In reality, the Chapter brought the Religious before the Metropolitan Court; but when a judgment was issued that did not favor either party, the case was brought before the Sacred Congregation of Rites. SYNOPTIC DISCUSSION. THE RIGHTS OF THE DOMINICAN ORDER. The Procurator of the Order of St. Dominic presented the following rights: To the Holy Congregation of Rites, on July 2, 1620, this formula of doubt was proposed to be resolved: "It sometimes happens that some Religious die outside the Monastery, in the home of their parents... it is asked whether their Superiors, as Religious, can, at night..."

[*Latin ed. p. 188*]

Appendix 188 III: «to order them to be transferred to their own church»: to which the Sacred Congregation of the Council responded: that Religious who leave the cloister can be transferred to their churches, even without the consultation of the parish priest. From this resolution, the Advocate inferred that a Superior Religious could transfer the body of a deceased Religious at any hour, or day, or night, and in any manner, even solemnly, since no limitation is placed upon this in the resolution. Indeed, the authors Cardinal Petram, Pignatelli, and Matthaeucci write that in this case, the transfer should be made without pomp, without a cross, without a procession; but this is only their opinion, since such limitations are not found in the aforementioned resolution, and rather the following should be considered: where the laws do not distinguish, neither should we distinguish; or, the law, where it wishes to express something, expresses it; where it does not express it, it does not wish it: therefore, the transfer of the body can be carried out in the manner that is pleasing, without any dependence. Furthermore, it has long been decided and affirmed that the funeral of a deceased person, which must pass through another parish, can pass through that parish without the consultation of the parish priest; therefore, it follows that a Superior Religious, since he is the true parish priest of the deceased Religious, can pass through the parish, without the

Translated by churchlatin.ai, a product of Boyne Archives

consultation of the parish priest, in order to carry the deceased to his proper burial place, with the Confraternity established, with stole and cross.

RIGHTS OF THE CHAPTER. The parish chapter, presenting its rights through its Defender, brought forward the general rights that were presented for parish priests in the preceding case concerning funerals, page 177. Then, in order to dispel the difficulties that could be raised, it proceeded, saying: It is true that Religious are subject to the jurisdiction of their Superiors, and not of parish priests; but it does not follow from this that the parish priest should be excluded from the transfer of the body of a Religious to the cemetery, and that this should be carried out by the President of the Confraternity, since he is the parish priest of the deceased. For the power of the Superiors of Religious is circumscribed within the walls of the monastery; but outside, it cannot be exercised in the jurisdiction of another. Hence, it has been defined by the Sacred Congregation in Collectanea, April 21, 1609, Cardinal Petram's Commentary on the Constitution of Innocent III, Constitution 9, number 13, volume 2; Pignatelli, Consultations 199, number 5, volume 4, that a Religious who is ill outside the cloister cannot receive the Sacraments from a Superior Religious, or from anyone acting on his mandate. And that the funerals of Religious cannot be carried through streets and public places, without the knowledge and presence of the parish priest, is clearly stated in Amostaz, on pious causes, Book 1, chapter 5, number 8, Cardinal Petram, loc. cit., number 11, Pignatelli, Consultations 191, number 4, volume 4, and others, as well as in the aforementioned Sacred Congregation in Collectanea. Nor should the resolution cited on July 2, 1620, be alleged against this, which states that Religious who leave the cloister can be transferred to their churches, even without the consultation of the parish priest; for this should be understood as referring to a *privata* association, and not to a solemn one, Cardinal Petram, loc. cit., number 9. The resolution concerning this matter is found in volume V, page 222, paragraph third.

[*Latin ed. p. 189*]

Appendix III 189. The same reasoning dissipates the objection which might be raised, namely, that the conveyance of the body to the cemetery should be considered as a continuation of the funeral rites which are performed in the church beforehand, and therefore, just as these pertain to the Regulars, so too should this conveyance. However, since the jurisdiction of the Regulars ceases outside the confines of the monastery, such a continuation through territory subject to another jurisdiction should be forbidden; all the more so, because the cemetery is the terminus of the sacred function, and since, as it is often located within parochial boundaries, the Regulars cannot exercise their jurisdictional acts there. Furthermore, the example drawn from the fact that it is permissible for a Parish Priest, for the purpose of conducting a funeral, to pass through another parish without seeking

Translated by churchlatin.ai, a product of Boyne Archives

permission from its Rector, does not apply, because it is not the same thing for a secular Parish Priest to do so, as it would be for a Regular, who is the Parish Priest of his own religious community. The foundation of this arrangement is a certain kind of mutual respect, so that if a Parish Priest has shown patience to another Parish Priest passing through, he would be expected to show patience in return if that Parish Priest were to pass through his jurisdiction. However, this reciprocal arrangement, and any kind of compensation, cannot be instituted with the Regulars, because it can never happen that Parish Priests should pass through a monastery, on the occasion of funerals. These are the points concerning the two previous questions. Proceeding to the third question, the Orator says: "From the aforementioned principles, a response also follows regarding the third question. If it is the right of the Parish Priest to conduct a funeral, then he should also have the right to complete it, by performing the final burial rites, which otherwise could not be performed by a Regular; and that the jurisdiction over the deceased Religious ceases, and that the cemetery is subject to the jurisdiction of the Parish Priest. And just as it is forbidden for secular priests to perform sacred functions in the churches of the Regulars, so too it should be forbidden for the Regulars to perform them in places subject to the secular clergy." With these and other considerations, the propositions are as follows: I. "Whether, after the office has been performed over the body of a Regular, the Parish Priest of the metropolitan church should be called and should be present, wearing his stole, at the solemn committal of the same Regular to the public cemetery, in this case." II. "Whether this funeral procession should be ordered under and preceding the cross of the metropolitan or parochial church, in this case." And as affirmative answers to both I and II. III. "Whether the Parish Priest should lay aside his stole near the grave of the Regular, or rather, should he complete the office already begun, in this case?" And as negative answers to I and II.

[*Latin ed. p. 190*]

Appendix 190, III, IV. "Whether Religious [orders] can, without the intervention of the Parish Priest, arrange a procession with a stole and a customary cross up to the tomb, or rather, whether both signs [the stole and the cross] must be placed during the passage through the parish, to be taken back later in the cemetery, in this case."

RESOLUTION. The Holy Congregation, having knowledge of the matter, decided on January 24, 1846, to respond as follows: To I and II, negatively in all respects, provided that the body is carried without solemn ceremony, by a direct route to the cemetery, by the family of the Religious order itself. To III, provision is made as stated above. To IV, affirmatively to the first part, with the conditions as stated above, and with the stole and the customary cross only: negatively to the second part.

Having compared such a resolution with the previous one, you will note:

Translated by churchlatin.ai, a product of Boyne Archives

I. The rights of the Parish Priest are not violated when the funeral procession of a deceased Religious or Religious is carried out without solemn ceremony, and is transported by a direct route to the cemetery.

II. The words "without ceremony" or "without solemn ceremony" mean the same thing, so that by these words, only a pompous funeral procession is excluded, which is usually carried out with a large number of secular and religious clergy, with the convocations of local confraternities, etc., which could not be carried out without the intervention and expense of the local Parish Priest.

III. However, a pompous funeral procession is not considered to be such, if the deceased Religious is accompanied only by Religious of the same order; therefore, neither is a pompous funeral procession of a deceased nun to be considered as such, if it is carried out by a few priests or clerics; especially if they are in some way or by title connected to the monastery.

APPLICATION OF THE MISSES. On February 24, 1872. Summary of the case. A certain Joseph, known as Gallinotti, in the town of N, made a certain sodality of the Most Holy Rosary existing there, the universal heir to the usufruct in his will in the year 1761. He ordered the same sodality to appoint a chaplain, chosen from certain designated families, who would celebrate a daily Mass in perpetuity for the suffrage of the testator and his parents.

[*Latin ed. p. 191*]

Applicationis Missarum 191. He wished that this Mass be celebrated daily at that altar and at that hour, which the sodality had designated, for the greater benefit of the people; and that the Pater and Ave be recited and offered for the soul of the aforementioned testator. However, so that the chaplains might not neglect these duties, he wished that, in addition to their lodging, an annual pension of eight hundred livres be granted to them. Foreseeing, however, the case in which the chaplain might not be able to celebrate this Mass, he decreed: "When the aforementioned chaplain, for a time, is unable to celebrate said daily Mass, the sodality must have the heir celebrate it in his place, with an alms of twenty shillings for each Mass, until the aforementioned chaplain is in a condition to fulfill his obligation himself; and this alms must be deducted from the aforementioned eight hundred livres assigned to him." As the testator had ordered, it appears that this was enforced until the year 1871. In that year, the present chaplain argued that he could omit the celebration of the daily Mass prescribed by the testator, not only because of illness, but also because of devotion, for example, because of spiritual exercises to be carried out in some religious house, and that the sodality could therefore withhold a portion of the pension. However, the administration of the sodality opposed this, arguing that, in these cases, it was bound by the terms of the will to substitute another priest, and it presented a petition to the Sacred Congregation, ask-

Translated by churchlatin.ai, a product of Boyne Archives

ing: "Is the sodality bound by the force of the Gallinotti will to ensure the celebration of daily Masses, either in the case of the chaplain's illness, or in the exercise of his spiritual duties, or in any other impediment?" The usual requests were made to the Ordinary for information and a vote, and after hearing the chaplain in writing, he was to report on the custom observed thus far in similar cases, and on the rights of the clergy. The chaplain wrote nothing other than that, because of the spiritual exercises he had undertaken, the livres 9 and 10 had been deducted.

[*Latin ed. p. 192*]

Application 192: Regarding the pension due to him, he stated that, in the meantime, eight Masses had been celebrated in his place by another, at the same location; and that, conversely, nothing had been deducted from his pension for spiritual exercises which he had likewise performed. The Bishop, among other things, pointed out that, in the past, no question had ever been raised regarding the interruption of the celebration of Mass on days when the Chaplain was engaged in his required spiritual exercises. He noted that the Chaplain's pension was now burdened by the taxes imposed by the Italian government, and barely exceeded the simple alms of Masses, so that if the Chaplain, due to illness, were to omit the celebration, he would be forced to beg; and that it seemed that the founder, who left a large inheritance to the sodality, had not intended to burden the Chaplains called from their families so severely; and that, indeed, he had intended that the celebration of Mass should be performed by others in the case where the designated Chaplain, not yet able, could not celebrate it himself. Therefore, considering the clause in the will and the circumstances explained, and also reflecting, the Bishop was of the opinion that the ordained Chaplain had been appointed to the title of that same chaplaincy, and that the daily celebration of Mass could be interrupted by the Chaplain in question, either due to illness, or due to reasons of propriety and due devotion, without anything being deducted from his pension.

Synopsis of the Discussion: The sodality, upholding the will of the testator, maintained that the last wishes of the dying should be observed scrupulously; which has always been the case in both laws: and that the will of the testator was that "in the case where the designated Chaplain 'for the time being' is unable to celebrate said Mass, the sodality must have it celebrated by 'whomever it prefers,' with an alms of 20 (now 24) coins for each Mass, until said designated Chaplain is in a condition to provide for himself; which alms must be deducted from the said 800 (now 880) livres assigned to him." Therefore, this will should be observed scrupulously.

JURA SODALITII. (Laws of the Sodality).

[*Latin ed. p. 193*]

Application of Missals, 193. Do not say that the recited words merely

Translated by churchlatin.ai, a product of Boyne Archives

refer to a lasting impediment, such as when a chaplain is not yet able to celebrate Mass; but rather, whether due to devotion or infirmity, for 1° it is known in law that no question of will should be raised when the words are not ambiguous; 2° the words presented are general and conveniently encompass, without absurdity, even the case of infirmity and due devotion; and therefore, a restrictive interpretation should not be permitted; all the more so, because even in doubt, that interpretation should be preferred which best promotes the salvation of the testator. Therefore, the Holy Congregation of Bishops, and the Registry, on May 19, 1627, in a case of this kind, decreed: "A priest, to whom the testator has imposed the obligation to celebrate daily in person, if he is legitimately prevented from fulfilling this duty in person, must satisfy the obligations of the Masses imposed by the testator through another." All the more so, because the testator intended that a daily Mass be celebrated in that altar and at that hour, which was designated by the sodality, for the greater benefit of the people. RIGHTS OF THE CHAPLAIN. The reasons that applied to the chaplain were those which the Bishop had adduced in his vow, especially since the sodality's church was abundant with Masses being celebrated. FROM WHAT HAS BEEN ADDED EX OFFICIO. It is recorded that Alexander III, in chapter n, de Praebend, wrote to the Prefect and Chapter of the Island: "It has been brought to our attention that 'to a certain priest, you have freely given a prebend in your church, so that he should daily celebrate Mass in the church of the Holy Mary,' (unless he is burdened by a bodily infirmity) 'and that he may not leave your church except with the common consent of both the Prefect and the Chapter, or delegate the celebration of that anniversary to anyone.' We confirm this institution so that the aforementioned priest, unless he is prevented by bodily infirmity, should diligently serve the aforementioned church, and celebrate the solemnities of the Masses as frequently as possible (preserving his honor and due devotion)." Acts, vol. VII, p. 76, line 13.

[*Latin ed. p. 194*]

194. Application of Misses: "He is to celebrate [the Mass]; nor is it permitted to him to abstain from this, whether for the sake of pleasures, or because he transfers himself to another church." On the occasion of this decree, which concerns the new burden of celebrating daily Mass, which was confirmed by Alexander III with the limitation of *aequa* [Vico Equense]. Interpreters do not treat the abstract question of whether and when it is permissible for a chaplain, who is obliged to celebrate daily, to interrupt the celebration, without being required to fulfill it through another. Giraldi, addressing this question in his work *Expositio iuris Pontificii*, volume 1, paragraph 1, title 3, on Prebends, section 3366, presents various opinions, which it is appropriate to mention; thus he wrote: "Concerning the interruption of the celebration due to infirmity, this is assigned differently by

Translated by churchlatin.ai, a product of Boyne Archives

the Summists and Canonists, as related by Cabasutio in *Iuris Canonici Theoria*, book 2, chapter 28, number 10. Some restrict it more strictly, limiting it to only ten days, and even fewer, after which, if the infirmity persists, they believe that another should be substituted by the chaplain, who would celebrate in his place. Others, extending this interruption more broadly, according to the Decree of the Council of *Mediolanensis* [Milan], title on Masses, assign a month of illness, during which, they believe, the full stipend can be received, without the chaplain being obliged to have another fulfill the celebration. "Others, reasoning more equitably from the interpretation of another text, exempt the same chaplain from the obligation to have another fulfill it, if his infirmity lasts only fifteen days, unless it is contrary to natural equity, according to which, as the Glossa in L. *Arboribus* §. *De illa*, ff. *de usur.*, rightly observes, the salary should not be denied to a servant who has been ill for a short time. This more equitable opinion has also been adopted by the Congregation of Holy See in *Romana Celebrat. Missarum* on June 4, 1689, and November 17, 1695. Therefore, the chaplain burdened with this obligation, after considering the other opinions mentioned above, should follow this; since the declaration of the Congregation, as it is, is of the highest authority."

[*Latin ed. p. 195*]

"Regarding the application of Masses, 195: 'In deciding similar doubts, the authority of the Pope prevails; therefore, the opinion of private Doctors should always be preferred.' If, however, a chaplain were to be rendered completely incapable due to some infirmity, and had no other means of livelihood, and had been ordained to a title of chaplaincy, then, during his infirmity, he is not required to fulfill this obligation through another, as the same Congregation declared in Pistoia on February 5, 1650, as found in the book of Decrees, page 24, in the same way that a similar chaplain in Padua was exempted under similar circumstances on April 24, 1655, in book 19, page 453.

"Concerning the matter of propriety and due devotion, regarding which the text cited states: 'The opinion of many, and indeed of great note among Canonists and Theologians (namely, Panormitani, Silvestri, Angeli, Navarri, Zerola, Suarez, and Barbosa, as cited by Cabasutius in the aforementioned passage, number 9, and other authorities cited here by Gonzalez), is that such a chaplain may omit the celebration of Mass once a week; indeed, Navarrus in Council VI, concerning those who are provided for, and Zerola, believe that, in addition to one day, another day may sometimes be added in any given week. Others, however, entirely reject this number of omissions, considering it to be far removed from a reasonable interpretation of the Founder's will, who, it cannot be presumed, intended to assign a daily stipend to the chaplain, and at the same time to deprive him of the suffrage of Masses, fifty-two in each

Translated by churchlatin.ai, a product of Boyne Archives

year. There are others who believe that it may indeed be permissible to omit the celebration for so many days, but that it should be fulfilled through another; and there are also those who exempt him from this obligation. Finally, others, among whom the esteemed Cabasutius in the aforementioned passage, interpreting the text of Alexander, undoubtedly grant that the celebration may safely be omitted for one day in each month, for the sake of propriety and devotion, strongly opposing that more lenient opinion, which allows for the omission of one day in each week. And rightly so: for when it is a matter of propriety, this..."

[*Latin ed. p. 196*]

196. "The application of Masses might be excused for another reason than the indisposition of the soul," (as the Glossa notes here, and the Doctors commonly hold) "due to mortal sin, of which the priest, being aware, would then only be able to postpone the celebration, if the opportunity for Confession is not available; which, indeed, rarely happens; otherwise, if this occurs every week, it would be attributable to his malice, and to a bad habit, which would be detrimental to the benefit for the soul of the Founder. But if it concerns devotion, it must be considered whether this deficiency also arises from his own fault, who so often lacks fervor of spirit and does not try, for example through prayer, to remove the obstacles to devotion: and thus, in both cases, he would sin, and would be obliged to make amends in another way.

In this conflict of opinions concerning the postponement of a certain number of Masses for reasons of honor and devotion, the Congregation [of Cardinals] refrained from declaring how many times this postponement would be permitted to the priests in a year, lest it give the chaplains too much leeway; as is evident from the answers given to the Bishop of Collensi on September 18, 1683, namely:

"The Bishop of Collensi, during his visit to the diocese, found that, without great danger to consciences, several abuses had crept in in the execution of the intentions of those who ordered the celebration of Masses. Therefore, in order to correct them, the following was discussed and resolved:

I. Can priests, who are obligated by reason of their benefice, chaplaincy, legacy, or stipend to celebrate Mass daily by themselves, ever be excused from celebrating?

II. When, and how often, can they be excused from said celebration?

III. On days of permitted absence, can they celebrate Mass for themselves, or for others, besides for the Founders? And the answer was affirmative.

IV. Can they receive a stipend for celebrating for others?

Translated by churchlatin.ai, a product of Boyne Archives

V. On those days, on which they are lawfully excused from celebrating,

[*Latin ed. p. 197*]

"Regarding the application of Masses, 197: 'Are those who are obligated to have Masses celebrated by others to do so according to the intention of the founders?' VI. Are priests, as mentioned above, obligated to celebrate Mass daily, without, however, the burden of celebrating it themselves, ever permitted to abstain from celebrating? The Sacred Congregation [for Bishops and Regular Canons] responded affirmatively to the first two questions, provided there is a reasonable cause. To the third, fourth, and sixth questions, it responded negatively; to the fifth, it deferred the resolution (and on November 13, 1683, it responded that a resolution would be given in particular cases). Benedict XIV, in book 3, chapter 1, number 7, on the Sacrifice of the Mass, refers to these same questions and answers, and, having considered them, he abstains from expressing his own opinion, leaving it to be determined whether, in the opinion of those presented, the interruption of the number of Masses is to be tolerated." Thus far from Giraldi. Having presented these opinions, it is noted, both from the resolution quoted in response to question VI, and from the opinion of the Doctors, that if priests are not obligated to celebrate Mass daily by themselves due to their duties as chaplains or beneficed priests, then they can never be excused from celebrating. Therefore, it must be examined whether the obligation imposed on the chaplain is personal or not. If the obligation to celebrate is not personal, then, undoubtedly, the chaplain in question would be required to have someone else substitute for him. However, it appears that the obligation is personal, if the words of the institution are considered in conjunction with the doctrine given by Ferraris in *Bibliotheca Canonica* under the word "Chaplain" in general. Indeed, the words of the institution are: "When a chaplain appointed for a time is unable to celebrate the said daily Mass, the sodality must have another celebrate it in his place." However, according to what is given by Ferraris in the aforementioned place, these words seem to imply a personal obligation: for he wrote, in the same place, numbers 1 and following, "The chaplain is obligated to celebrate Masses himself if it has been expressly stated or implied in the foundation of the chaplaincy... Indeed, chaplains are obligated to celebrate Masses themselves if there is a precept of the testator or founder so conceived: and if, at times, he cannot celebrate, he must have another celebrate in his place."

[*Latin ed. p. 198*]

198. Regarding the application of Masses: [It is to be determined whether] they should be celebrated by others, as responded to by the Sacred Congregation [Sacra Congregatio] on December 1, 1688. Similarly, if the obligation of celebrating Masses is assigned to a chaplain by this law: "That he should celebrate Mass, and if at any time he is unable, he

Translated by churchlatin.ai, a product of Boyne Archives

should have it celebrated daily by another," or: "That the chaplain, for a time, should be excused from his duties for two months each year, and no more. That he may be excused for fewer days each week, and that even in the case of infirmity, he may have Masses celebrated by others," or: "And in the case of infirmity or absence, the chaplain may substitute another," it is said that the assigned obligation is personal, so that he himself is bound to celebrate, because the obligation is directed to the chaplain, whose *industria* [Monteu da Po] seems *electa* [Alet], and it implies personal satisfaction, as responded to in the aforementioned cases by the Sacred Congregation in *Romana* [Rome] on April 15, 1685, in the book of decrees, page 96, and on December 18, 1688; in *Florentina* [Florence], on November 13, 1755, and in *Civitatis Plebis* [Città della Pieve] in December. Conversely, if other words of the same foundation are considered: "The heir is to nominate forever a chaplain who will celebrate Mass daily forever," and these are compared with others, as stated by Ferraris in the cited passage, number 4, it should be said that the obligation is not personal. Indeed, the same author, number 4, states: "Otherwise, if the testator were to say: 'Whom the Mass should be celebrated by, the Rector who will be named,' then the Mass could be celebrated and the obligation fulfilled by another;" as also stated by the same Sacred Congregation on January 15, 1669, in the decree, page 281. As if it were stated: "The heir is to choose a chaplain who will celebrate Masses each week, for example, four;" for even then he is not bound to celebrate by himself, but he could have it done by another, as the same Sacred Congregation responded in another instance in *Sabinen* [Sabina], in March. With these and other observations in mind, the proposed questions are to be resolved in 1816, 1608, 1684. Doubts. I. "Does the administration of the Sodality of the Most Holy Rosary, in accordance with the will of Gallinotti, legally provide for Masses for all days in which the chaplain was excused from his spiritual duties in that case?"

[*Latin ed. p. 199*]

Applicationis Missarum 199: "And to the extent that it is affirmative. II. "Whether this should be observed, when the same Chaplain is 'aegrotat' [sick], or is detained by some other impediment in 'casu' [Kosso]."

RESOLUTION: The Most Holy Congregation of the Council, having knowledge of the matter on February 24, 1872, judged it fitting to respond as follows: To I and II, affirmative.

THEREFORE, IT IS DECREED: I. Priests who are obligated, by reason of a benefice, chaplaincy, legacy, or stipend, to celebrate Mass daily by themselves, may, by canonical equity, sometimes be excused, provided there is a reasonable cause, from being obliged to provide a substitute.

1. This canonical equity also derives from the text of Alexander III in chapter *Significatum:dixi*, and it also derives; because I believe that in the

Translated by churchlatin.ai, a product of Boyne Archives

case of chaplains, which are often instituted, although in the law of foundation it is said that the chaplain ought to celebrate by himself, that text cannot be applied in every respect. For it would be perfectly applicable in the case in which it would be clearly demonstrated, from the law of foundation, that the chaplain is bound only by himself, so that the founder intended the celebration of Mass to be only a personal obligation of the chaplain; in this case, the celebration of Mass would be considered as other personal duties which are connected with benefices, such as, for example, the recitation in the choir of the divine office: therefore, the chaplain would be excused from celebrating Mass during the time of his infirmity, until his infirmity lasts, and he would be obliged to provide a substitute; likewise, he would be excused for other reasonable causes, which could be justly enumerated as spiritual exercises: in this case, it would be fully in accordance with the text in chapter *Significatum*. But such chaplains, if they perhaps existed in the past, are certainly very difficult to find now; for although it is said in the foundation that the chaplain ought to celebrate by himself, this is generally not understood to mean that the celebration of Mass is only a personal obligation of the chaplain, but rather that it is safer to provide for the celebration of Masses so that they are not neglected by others. For founders of chaplains understand and intend primarily the celebration of Masses from which they may receive suffrage, unless the contrary is proven. Since this is usually the intention of the founders, although the words "himself" are found in the foundation, they can accomplish nothing other than that, when a reasonable cause arises, the chaplain is not obliged to provide a substitute if he cannot celebrate Mass; for example, if he is sick for a short time, if, conscious of a grave sin, he cannot celebrate, if, for the sake of acquiring greater devotion, he suspends Mass for a certain day, if, for the sake of a journey, he cannot celebrate, etc. But if a necessary interruption of Masses appears to be prolonged, e.g., if for fifteen days within...

[*Latin ed. p. 200*]

200. The application of the Mass must be made in the second will. However, it may be entrusted to others to celebrate, unless they are obligated to celebrate the Mass themselves.

III. The same applies when it is permitted for them to celebrate it themselves, but it is stipulated in the foundation that, if they are unable to celebrate it themselves, they must have it celebrated by another.

IV. Therefore, even if, according to the law of the foundation, the obligation to celebrate is considered personal, it does not necessarily follow that they are free to have it celebrated by another, if the founder has foreseen such a case. If more than a year passes, the obligation to entrust the celebration to others would become urgent, so that the founder's intention would not be frustrated.

This was admitted by the Congregation of the Council in Rome on

Translated by churchlatin.ai, a product of Boyne Archives

September 25, 1695, "in the case of infirmity not exceeding fifteen days."

These things may be admitted when the founder clearly states that the chaplain must celebrate it himself; for it is not sufficient that he states that it must be celebrated, and that he must reside there, since all of these things are compatible with the possibility of celebrating it by another, according to the decision of the Rota, 825, before Merlino, and widely cited in Cremona. The benefits of March 9, 1714, before Lancetta; and of February 4, 1715, before Cerro.

In this matter, it must be admitted that there has been a very diverse opinion among the authors and the Holy Congregations, and I have considered several resolutions, which do not seem to be reducible to a principle of unity, so that a certain norm cannot be derived from them (cf. e.g. the resolutions cited by Benedict XIV in the Discourse which he wrote while serving as Secretary of the Holy Congregation of the Council, and to the Holy Congregation on August 8, 1722, in Thesaur. Resolut.).

I believe that this diversity originates from the fact that, on the one hand, the text of Alexander III in chapter *Significatum* admits a certain interpretation for those who are entirely obligated to celebrate it themselves; on the other hand, the Council of Trent, Session 25, de Ref., canon 5, affirmed the principle that whatever is established in the foundations must be strictly observed; and also, the principle that beneficiaries are obligated to fulfill their duties themselves. From these, it follows that, in the foundations of chaplaincies, whether the words "himself" are found or are equivalent, it is easily admitted that the obligation is entirely personal.

On the contrary, when considered more closely, the intention of the founders appears to be such that an external legal interpretation is less consistent with their intention; hence, some resolutions have arisen that are contrary, since, ultimately, the mind and intention of the founders is what establishes the norm for the interpretation of their words.

And this is the opinion that prevails in the present day with the Holy Congregation of the Council, as can be seen from the current practice.

Therefore, some old resolutions and decrees issued by various authorities, which are cited by the authors, e.g. by Ferraris, Monacelli, which seem to grant too much freedom to the chaplains, and indeed in the manner of a rule, should be disregarded and do not seem to be valid examples today.

[*Latin ed. p. 201*]

Application of Masses, 20, V. In this matter, if it should happen that the obligation of celebrating is considered a personal one, while at the same time it is stated that Mass should be celebrated by another if the chaplain cannot celebrate, this law must be observed. VI. Nor could the chaplain be aided by the title of chaplaincy, by which he had also been ordained: since the chaplaincy was not founded with the intention of serving as a

Translated by churchlatin.ai, a product of Boyne Archives

title of his ordination. VII. If, by its nature, the chaplaincy could best serve as a title of ordination, it would not be permissible to overturn the law of the foundation. VIII. Nor, finally, can canonical reasons intervene, that is, necessity or evident utility, for dispensing, with Apostolic permission, from the law of the foundation.

DOUBTS REGARDING THE APPLICATION OF PAROCHIAL MASSES. December 14, 1872. Summary of the case. The Bishop N. presented to the Roman Pontiff, through a supplicatory letter, the following: "Since, from the Council of Trent, session 23, chapter 1, concerning Reform, and from numerous Constitutions of the Holy Pontiffs, it is required that parish priests, having charge of souls, apply the Mass for the people on Sundays and other days designated by Urban VIII and Clement IX, and since many difficulties have arisen concerning this manner of application and extension; to resolve these, the Most Holy Father humbly requests that the following doubts be answered by the Sacred Congregation: "I. Whether a parish priest, being absent from his parish on a feast day, sufficiently fulfills his obligation by celebrating Mass for his people in the place where he is staying on that very day, or whether he is truly obligated to substitute someone who will say Mass in his own church for the people?"

[*Latin ed. p. 202*]

202. Doubts concerning the application of the parish Mass:

"II. And inasmuch as, due to a just cause, one may not be able to provide for his own spiritual needs, whether he is obligated to apply the Mass for the people on the very feast day in the place where he then resides; or whether he must wait to return to the parish, so that the aforementioned application of the Mass for the people may be made by him in his own church?

"III. Whether a pastor, legitimately hindered by illness from celebrating Mass, is obligated, after regaining his health, to apply as many Masses for the people as he missed during his illness; or, in the case where he could not celebrate Mass himself, nor have it celebrated by another without grave inconvenience; or, in the case where he could have had it celebrated by another, but, through some vain fear or negligence, did not seek or obtain someone to celebrate for him."

Such doubts were presented to the Holy Congregation on June 27, 1871, in petitions or, as we have said, through summary requests. However, since the matter required some investigation, a response was issued, to be placed on record, and, according to the mandate, the matter was investigated more thoroughly.

It has therefore been observed, in the record or in the restricted cause, that the entire question can be reduced to inquiring whether the obligation of pastors to apply the Mass for the people is, or is not, both personal and

Translated by churchlatin.ai, a product of Boyne Archives

local; and that other considerations seem to depend on the solution of this question.

Synopsis of the discussion.

THE PERSONAL OBLIGATION IS SHOWN.

"The Council of Trent, Session 23, chapter 1, on Reform, decreed: 'Since the care of souls requires that the sacrifice be offered, those who are charged with the care of the flock, namely, pastors, must diligently attend to this, and must exhort and urge their flock, lest, neglecting this, they fail to perform and fulfill the other pastoral duties; and the Synodus [Council] admonishes them, reminding them that they must feed and govern their people with truth and with all the precepts of the divine law.'" Furthermore, by divine judgment, the duty is imposed to offer... and in all things, to observe the precepts.

[*Latin ed. p. 203*]

Doubts arise concerning the application of the parochial Mass, namely, that it is not certain whether, by virtue of the parish office, which is established by ecclesiastical law, and which makes pastors advocates in the part of the pastoral ministry established by divine law, the pastors are included under the Tridentine declaration. To these pastors, the obligation extends, that, mindful of divine precepts and having regard for the form of the flock, they should undertake pastoral duties, among which is the duty of applying the Mass for the people entrusted to them; those who would not fulfill this sufficiently, who, at their own discretion, would commit the celebration and application of the Mass for the people to others. This is in accordance with what Benedict XIV decreed in the Constitution *Cum semper*, dated August 19, 1744: for he said, "those to whom the care of souls is entrusted must not only celebrate the sacrifice of the Mass, but must also apply its fruit as a means for the benefit of the people entrusted to them." This was repeated by the Most Holy Father in the encyclical letter *Amantissimi*, dated May 3, 1858, in which he decreed: "Pastors and all others who actively exercise the care of souls must celebrate and apply the holy sacrifice of the Mass for the people entrusted to them." Since this office is said to be proper to those to whom the care of souls is entrusted, and who actively exercise it, it must be considered a personal office. This is confirmed by the authority of interpreters of the sacred canons: for Fagnanus maintains that the functions of the parish are personal, *cap. Extirpandae de Praebendis*; and similarly, Monacelli, p. i, tit. io, form. 18, § 14, writes: "Pastors and Curates must strive, so that they themselves, and 'not through their substitutes,' fulfill their duties." Also, Garzias, *de Benef.*, p. 3, n. 33, and Grassi, *in decis. aureis casuum conscientiae*, I. 2, c. 38, 7, and others. Therefore, since the application of the Mass for the people

Translated by churchlatin.ai, a product of Boyne Archives

is both a parochial and a personal duty, it must be considered. Hence, all canonists and theologians, speaking specifically of the obligation to apply the Mass for the people, have said that it is a personal obligation: that is to say, that, except in the case of a legitimate impediment, the pastor is bound to celebrate the Mass for the people himself.

[*Latin ed. p. 204*]

204 Doubts concerning the application of the parochial Mass. And this has been the constant practice of the Sacred Congregation of Councils, as, for example, in the case of Castelo Branco, during the visitations *ad limina* on July 18, 1789. The doubt proposed was: "Whether the pastors of the aforementioned churches (the cathedral and the collegiate church of Saint Mary) and other collegiate churches of the diocese of Castelo Branco are themselves obligated to apply the Mass for the people on feast days, or rather, whether they can fulfill this obligation through beneficed priests or other priests in that case." The Sacred Congregation responded: affirmatively to the first part, and negatively to the second. Also, in Fiesole, on June 16, 1770, and January 26, 1771, the following doubts were proposed: "I. Whether pastors, on Sundays and other feast days, in the presence of a corpse, can celebrate Mass for the deceased and postpone the Mass to be applied for the people to another day, in that case? And, to the extent that it is negative: II. Whether they can at least fulfill the application of the Mass for the people through another priest, in that case?" The response was: negatively to both I and II. In that resolution, the reason given was not sufficient for the pastors to allow another priest to celebrate Mass for the people. Also, in Mechlin, concerning Masses for the people, through summary petitions proposed on September 25, 1847: to the third doubt, "Whether the pastors themselves are obligated to offer the Holy Sacrifice of the Mass for the people, if no legitimate cause prevents them, or whether they can fulfill this office through another, for example, a sacristan or a visiting priest," the response was: affirmatively to the first part, and negatively to the second, except in the case of true necessity and with a concurrent canonical reason. Indeed, no custom was admitted that would allow the application of the Mass for the people by another, as in the aforementioned Mechlin: for to the fourth doubt, conceived in this way: "What should be thought of a custom, by virtue of which the pastor, on Sundays and feast days, applies a private Mass for a pious benefactor, and, without any legitimate impediment, transfers the obligation of celebrating the Mass for the people to another priest?" The response was: "The custom in question should not be considered." Also, in Policastro, on May 23, 1857.

[*Latin ed. p. 205*]

Doubts concerning the application of the parochial Mass, 205, among the presented petitions, and in Tivoli, on November 21, 180. From these, it is

Translated by churchlatin.ai, a product of Boyne Archives

clear that the obligation of applying the Mass for the people is personal, yet, if a canonical reason intervenes, by which he who actually administers the care of souls cannot apply it himself, he must apply it through another. Several examples have been brought forth, in which the existence of a canonical reason has been judged by the Sacred Congregation. Indeed, in the aforementioned Constitution *Cum semper oblatas*, the Pontiff declared that if a parish is annexed to a canonical prebend, the parish priest should celebrate and apply the conventual Mass; and he should order another to celebrate the parochial Mass at his own expense. Also, when in a parochial church there are priests whose duty, by law of foundation or by legitimate title, is to assist the parish priest in the care of souls, if they customarily apply the Mass for the people alternately with the parish priest, such a custom has been approved by the Sacred Congregation in Spoleto on May 14, 1831; also in Ripatransone, on December 15, 1725; and in Verulana, on December 12, 1829. Similarly, if the care of souls belongs to a Chapter, as often happens, and is exercised by a Vicar, and the Canons customarily apply the Mass for the people in turn, such a custom must be observed, as in Camerino, on December 16, 1820. If the parish priests are so poor that they are almost forced to live on the alms which they receive from the faithful for the celebration of Masses, then it is permissible for the Bishops to grant a dispensation so that such parish priests may, on feast days, receive "alms" from some pious benefactor and apply the sacrifice for him, so that they may freely and lawfully be able to provide for themselves, provided that they celebrate the Mass in the parochial church for the necessary benefit of the people; but with this condition added, that they apply as many Masses for the people within the week as there are feast days occurring within the same week, according to the particular intention of another pious benefactor.

[*Latin ed. p. 206*]

206. Doubts concerning the application of the parochial Mass, "rint." Benedict XIV, Constitution *Cum semper oblata*, § 8. Thus far, regarding the personal obligation.

AS TO WHAT IS ADVANCED IN FAVOR OF THE SAME MASS BEING OBLIGATORY: It has been considered that the parish priest, by law, is bound to perform the parochial duties; therefore, it follows that the parish priest is obligated to celebrate Mass for the people in his own parochial church. Thus, for example, Barbosa, in *Summa Apostolica*, decisions, collection 478, no. 28, states: "The parish priest must celebrate Mass 'in propria ecclesia et non in alia,' notwithstanding any contrary custom, Lucan." (September 15, 1629). He repeats the same in *Collectanea ad Concilium Tridentinum*, session 22, on Reform, chapter 8; and on the office of the parish priest. Also, Ferraris, *Bibliotheca*, under the word "Parochus," article 3, no. 1, states: "The parish priest must celebrate Mass 'in propria

Translated by churchlatin.ai, a product of Boyne Archives

ecclesia et non in alia' on feast days, notwithstanding any custom to the contrary." S.C.C. "in Lucana, September 13, and November 9, 1629," apud Seil, in *Selectis Canonis*, chapter 36, no. 34, and apud Barbosa, etc. And it is also often alleged the other resolution in *Fanon*, dated November 17, 1629; and also S. Rota Decis. 469, no. 67, page 19, volume 2, recently; where, citing Barbosa, it affirms: "Parish priests are bound 'omnibus diebus festivis Missam celebrare in propria ecclesia, non autem in alia, quacumque consuetudine in contrarium non obstante per textum Ut dominicis 2 de Parochiis et alien. Paroch.'" It also seems that this can be inferred from the words just cited by Benedict XIV, "provided that [the Mass] is celebrated in the parochial church for the necessary convenience of the people." Bouix, in his work on the Parish Priest, from the resolution in *Commentaria*, May 2, 1720, when, regarding doubt V, "Whether, if it occurs that the archpriest who is a parish priest celebrates a conventual Mass or another legitimately, or is absent or hindered, either on feast days or on weekdays of Lent, he is obligated to have the parochial Mass celebrated by another for the people," the Sacred Congregation responded affirmatively, but with the application only on feast days; this demonstrates that the parish priest must celebrate Mass for the people in the parochial church. Indeed, if the parish priest is legitimately absent from the parochial church.

[*Latin ed. p. 207*]

Concerning the application of the parochial Mass, it is questioned whether it is permissible to appoint another to celebrate and apply the Mass on feast days, and it seems to follow that it is not permissible to apply it for one's own people in the place where one resides; otherwise, it would suffice if one merely took care that the Mass be celebrated, without it being applied.

Now, let us consider what is contrary to this. Certain arguments have been put forward that would weaken both obligations. It has been observed that there are those who believe that the obligation of pastors to personally celebrate Mass for their people is not so grave that they cannot, for a slight reason, delegate this burden to others, as daily practice often demonstrates; Cavalerius, vol. 1, *Opera Liturgica*, chap. 5, para. 9, ad decisionem n. 5. Nor is there anything absurd in this, since the reason for applying the Mass for the people seems to be no other than that the fruit of the sacrifice be applied for the people, and that the people receive the benefit of hearing the sacred rites in their own parish; and these two things can be obtained in the same way, even if another priest celebrates. If the personal obligation is too strictly enforced, it would seem to follow that, if the pastor is hindered, the obligation would cease, since a purely personal obligation does not extend beyond the person. And if the local obligation is too strictly enforced, that is, the obligation to celebrate personally in the parochial church, a pastor who is legitimately absent would seem to be released from the

Translated by churchlatin.ai, a product of Boyne Archives

obligation of appointing another to celebrate Mass in the parochial church. Since therefore, neither of these can be admitted without reservation, it does not seem incongruous that a pastor might, even for a slight reason, appoint another to celebrate Mass for the people in the parochial church. Moreover, since, by universal custom, parishioners are no longer obliged to attend Mass in the parochial church, it seems quite reasonable that both of these obligations should be relaxed if the pastor, being absent, celebrates for his people where he resides; for the fruit of the Sacrifice is the same, no matter where it is celebrated: and another priest celebrates in the parochial church for the convenience of the people. And with regard to the obligation to celebrate in the parochial church and not in another place, it has been observed that the authorities cited are not very persuasive. For Barbosa, and others from this author,

[*Latin ed. p. 208*]

208 Doubts concerning the proper application of the parochial Mass arise from the case of Lucana, which is found in the *Registra S. C. C.*, book of decrees, 14, page [illegible], as follows: "The Holy Congregation judged that the Bishop should assign to each parish, according to the reserved faculty, a portion, whether of twenty or fifteen [presumably referring to the number of souls], respectively; and the obligation imposed upon the Parish Priest Tempognani to attend the parochial church of Antioca, and to celebrate there, was to be considered abrogated." From this resolution, although we do not have the specific details of the case before us, it is easily apparent that a strict obligation to celebrate in the parochial church and not in another, as argued by Barbosa and his followers, cannot be established; for it concerned an obligation imposed, that is, perhaps a law arising from a contract or statute, by which one Parish Priest, having left his own church, was compelled to attend another parochial church and to celebrate there on Sundays: which everyone can see is quite unusual. The same must be said of another resolution concerning the Rector of Urceani, dated November 17, 1629, in the book of decrees, 14, page 172; in this case, the response was: "The Holy Congregation judged that the aforementioned custom should not be admitted, but that Mass should be celebrated on feast days in one's own parish." In this case as well, it concerned a custom of celebrating elsewhere on feast days, a custom which no one would fail to condemn. The text in chapter 2, concerning Sundays and other parishioners, which the Sacred Rota cited, cannot be usefully adduced: for the provision contained in that chapter refers to the time when each parishioner was obligated to hear Mass on feast days in his own parish; therefore, the obligation of the Parish Priest to celebrate in the parochial church should have been more pressing at that time. Thus, in that chapter, taken from the Council of Nantes, it is stated: "That on Sundays or feast days, the priests, before celebrating Mass, should ask

Translated by churchlatin.ai, a product of Boyne Archives

the people whether there is any parishioner of another parish present in the church, who, out of contempt for his own priest, wishes to hear Mass there; and if they find such a person, they should immediately drive him away from the church." With these and other observations in mind, the proposed solutions must be considered.

[*Latin ed. p. 209*]

Doubts concerning the application of the parochial Mass. 209. "I. Does a parish priest, being legitimately absent from his parish on a feast day, fulfill his obligation by celebrating Mass for the people in the place where he resides, or rather, is he obligated to arrange for another to celebrate Mass for the people in his own church? And concerning the second part: II. Is he obligated to apply the Mass for the people in the place where he resides, or rather, upon returning to his parish, is he obligated to apply it in his own church? III. Is a parish priest, legitimately hindered by illness from celebrating Mass, obligated after his recovery to apply as many Masses for the people as he omitted during his illness, or in the case where, neither he nor another could celebrate without grave inconvenience, or in the case where another could have celebrated, but through some vain fear or negligence, he did not arrange or did not obtain that another celebrate for him?

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on December 14, 1872, decided to respond to the doubts as follows: "A parish priest legitimately absent from his parish on a feast day can fulfill his obligation by applying a Mass for his people in the place where he resides, provided that another priest celebrates and explains the word of God in the parochial church for the necessary benefit of the people. However, a parish priest legitimately hindered from celebrating Mass is to ensure that the Mass is celebrated and applied for the people in the parochial church by another; and if this has not been done, he must, as soon as possible, apply a Mass for the people."

FROM WHICH WE GATHER: I. That the obligation of celebrating and applying a Mass for the people is both personal and real; so that, for a parish priest personally legitimately hindered, the obligation does not cease.

1. Compare what I noted concerning the Mass for the people in vol. III, p. 98.

2. Acts, vol. VII, section LXXVI, 14.

[*Latin ed. p. 210*]

210. Doubts concerning the application of the parochial Mass. For the celebration and application of this Mass are connected with the benefit of the parish, just as are the other pastoral duties of recognizing the sheep and feeding them with the preaching of the Word of God, the administration of the sacraments, and the example of good works, etc. III. Therefore, why

Translated by churchlatin.ai, a product of Boyne Archives

do such duties so urgently obligate the parish priest, so that in the person of the parish priest, they should not cease, but rather must be fulfilled in some way by another? IV. Hence, a parish priest who is legitimately absent can indeed apply the Mass for his people where he resides; but since his absence prevents him from performing other pastoral duties due to the people on feast days, one satisfaction does not release him from other obligations.

1 2 1. Compare the case treated in detail in the Sacred Congregation for the Propagation of the Faith, concerning doubts about the application of the Mass for the people, in vol. 1, p. 389 and following. Someone might ask whether the word "dummodo" (provided that) in the resolution implies a condition, so that a legitimately absent parish priest does not fulfill his duty by applying the Mass for the people where he resides, if another priest is not present in the parish who can celebrate and explain the Word of God for the necessary benefit of the people. But the answer is clear from the very words of the resolution: namely, that a parish priest who is obligated to celebrate Mass in his own church and explain the Word of God for the benefit of his people by applying the Mass for his people in the place where he resides, would not fully fulfill his obligation, which does not consist entirely in the simple application; but he would fully fulfill his obligation if he were to provide a substitute who would perform the other necessary duties in the parochial church. Therefore, the word "dummodo" implies a condition for fully fulfilling [the obligation], so that by the simple application, he would fulfill only a part of his obligation. Conversely, he is not obligated to provide a substitute on suppressed feasts, on which the people are neither obligated to hear Mass nor perhaps attend church; in that case, he fulfills his obligation by simply celebrating Mass for the people, without providing a substitute. It could also be asked: since a parish priest who is legitimately absent is obligated to provide a substitute for the necessary benefit of the people, who will celebrate, can the parish priest entrust this application to another, without any other reason? The answer is affirmative; and this case has already been resolved, in the aforementioned decree of the Congregation, dated May 11, 1720. Therefore, since a legitimately absent parish priest can either apply the Mass himself for the people in the place where he resides, or he can entrust the same application to another in his parochial church, it can be asked, what is more beneficial to the people? I answer: the application of the Mass for the people consists in the "application of the fruit of the sacrifice, which we call the medium, made to the people": and this...

[*Latin ed. p. 211*]

Doubts concerning the application of the parochial Mass.

V. Why is it necessary for another to advise the pastor so that the parochial Mass is not omitted for the necessary benefit of the people, nor is

Translated by churchlatin.ai, a product of Boyne Archives

the explanation of the Word of God, as are other necessities for the people?

VI. However, when the application of Masses for the people, by the force of ecclesiastical law, compels the pastor daily on feast days, and constitutes a real burden; if, whether by himself or by another, the application is omitted, the pastor must apply as many Masses as he omitted as soon as possible.

VII. From the above, it also follows that the pastor, not legitimately impeded, must celebrate the Mass for the people in his parochial church.

RECORDS. August 12, 1871. Summary of the case. On February 22, 1862, a case was brought before the Sacred Congregation under this title between Ambrose, the canon, and Aloysius, his coadjutor: and with the following formulas for consideration: "I. Is the coadjutor obligated to restore to the coadjutor the emoluments derived from anniversaries, processions, and capitulations, which he lost due to his absence? II. Is the deduction for compensation to be made from the coadjutor's emoluments the same everywhere where the sacrifice is celebrated? But since the parochial sacrifice, or Mass for the people, is often celebrated in small towns where the people attend more frequently, and when the priest offers the sacrifice to God, the fruits of which are in part applied to himself, it would be better if the same priest applied the same Mass for the people. Others ask, whether a pastor who enjoys the privilege of a private oratory and is not unable, can celebrate the Mass for the people in his private oratory. This question does not seem to merit a response: for here the pastor would appear to be promoting his own convenience, and not seeking to fulfill the laws of the Church. A legitimate reason is required for the pastor to lawfully not celebrate the Mass for the people in his own church, even though he fulfills other obligations: among legitimate reasons, the pastor's own convenience is certainly not the greatest, although, if he fulfills other obligations, a serious reason does not seem to be required.

[*Latin ed. p. 212*]

212 Concerning Allowances: "It must be determined whether the allowance is to be calculated according to the proportion of profit, which, above the fallen [in rank] Coadjutor, the Coadjutor receives in the general division of 'Chapters': the response was: To I. Affirmative, and furthermore. To II. Affirmative, and furthermore, and according to the intention. The intention was that it should be written to the Ordinary, so that the division of penalties in the future would be carried out according to the laws and resolutions of the Holy Congregation. The resolution given to the first question pertained to the common law, which is usually expressed in Apostolic Letters concerning the Coadjutorship; the resolution given to the second question pertained to that custom, which the Holy Congregation abolished in this very resolution, that is, the custom by which, for a period of time, among all the Canons, the sum of the monetary penalties arising

Translated by churchlatin.ai, a product of Boyne Archives

from infractions or faults was divided individually, so that, for example, a Canon who had lost ten pounds due to an infraction or fine, would benefit from the distribution of infractions by receiving, for example, one pound from his own infraction. Therefore, since the Principal Canon or Coadjutor received a portion of the penalties in the general distribution of infractions, which his Canon Coadjutor had lost, it was asked in the second question whether the Coadjutor should subtract a portion of the penalties that the Coadjutor received in the general distribution concerning the Coadjutor's own penalties, in order to reimburse the Coadjutor. And the Holy Congregation responded that such a subtraction should be made, as we have seen. With such resolutions given, Ambrose, the Canon Coadjutor, presented Aloysius, the Coadjutor, with a calculation of penalties, from which it appeared that Aloysius should compensate Ambrose with the sum of 14 shillings and 1 penny. When Aloysius saw this sum to be excessive, because it had not been made according to the resolutions given, he again requested that the Holy Congregation decide on this matter. Aloysius questioned the calculation, arguing that no deduction should be made according to the second resolution.

1. See the case concerning Penalties, which you have in Vol. II, page 218, where you have more information on the matter.

[*Latin ed. p. 213*]

Regarding the disputed sums (which Aloysius claimed he did not understand; for he intended to subtract what the Coadjutor received from the errors of other Canons): he added that it was unjust to presume that Ambrose should be compensated for whatever profit he might have made had he always attended the choir; for the Coadjutor was held accountable for avoiding loss, not for obtaining profit; 2° that no indulgences granted for absence from the choir had been taken into account; 3° that he had been marked present on certain days when he was ill. After customary prayers to the Ordinary, so that he might, after hearing the Chapter, give his opinion, the Chapter rejected the reasons presented by Aloysius, noting among other things that the Coadjutor's position contained a double benefit, that is, the right of succession to the prebend in favor of the Coadjutor, and the benefit of obtaining through the Coadjutor all and singular emoluments. Regarding the indulgences, the Chapter considered that the reason for the indulgences had not been taken into account in the division of the errors, because they had not been presented at the appropriate time, which he demonstrated to several, alleging certain indulgences that had been obtained after the division of the errors had already been made. As for the days on which Aloysius claimed to have been ill, the Chapter replied that he had been justly marked present, because he had not presented medical testimony at the appropriate time, and furthermore, the Chapter asserted that Aloysius had left his house on those days, and therefore could not be

Translated by churchlatin.ai, a product of Boyne Archives

said to be ill. The vote of the Ordinary was in agreement with the vote of the Chapter. After these matters, Aloysius obtained that a new calculation be made by three designated Canons. These Canons, after examining the matter, reported that Aloysius had attended the choir very diligently, and that the total of the days marked present over a period of fourteen years amounted to only 30 schillings; that the indulgences had been presented to the Chapter at the appropriate time, etc., and therefore a new calculation was made, to which the heirs of Ambrose responded with new deductions. With these and other matters explained, the proposed resolutions are to be considered.

[*Latin ed. p. 214*]

Concerning Benefits, Doubts:

"I. Whether the computation made by the Chapter is to be observed in this case. And to what extent.

II. Whether and which norms are to be observed in the new computation to be made in this case."

RESOLUTION:

The Holy Congregation of Councils, having knowledge of the matter discussed in the meetings held on August 12, 1871, judged it fitting to respond as follows:

To I: This will be provided in the second [point].

To II: Affirmative, and to the following extent. The intention of the Holy Congregation was that the new computation should be made by the Ordinary, and in such a way that all certain and uncertain revenues are included which the Coadjutor would have received if he had diligently performed all canonical functions, except in the case of a legitimate impediment of the Coadjutor; however, the amount of any errors made by the Coadjutor, received by the Coadjutor from said errors of the Coadjutor, shall be deducted: with the Coadjutor retaining the right of recourse against and to the extent of any legitimate indulgences and impediments, if any have not been legitimately computed.

FROM WHICH, THE FOLLOWING MAY BE GATHERED:

I. That the benefit of the canonical Coadjutorship extends in two ways: that is, to grant to the Coadjutor the right to future succession to the canonical position; and to grant to the Coadjutor compensation in the receipt of all canonical emoluments, as if he were present in all functions, whether choral or otherwise, which the Chapter performs.

II. Therefore, the canonical Coadjutor is to compensate the Coadjutor for all that the Coadjutor did not receive from the Chapter, and which he would have received had he been present.

Translated by churchlatin.ai, a product of Boyne Archives

III. Therefore, if any question arises that the Coadjutor has not been legitimately penalized, such a question should not burden the Coadjutor; but should be settled between the Coadjutor and the Chapter before the proper tribunal.

[*Latin ed. p. 215*]

Emoluments 215 IV. However, the Coadjutor cannot receive anything that he would not have received through his presence if he did not have a Coadjutor; since, by a fiction of law, the Coadjutor and the Coadjutor together represent only one person in canonical rights.

INDULGENCE FOR ABSENCE. September 16, 1871. SUMMARY OF PRAYERS. Raphael, a canon of the cathedral church of N, having reached old age and suffering from asthma, was compelled, by the advice of physicians, to enjoy purer air under a temperate sky, in order to promote his health. Therefore, he petitioned the Sacred Congregation with a humble letter, requesting that it would deign to grant him an indulgence for absence from the choir for six months, so that he might be excused from the burden of fulfilling his canonical duties. Having received these prayers, the Bishop was asked, according to custom, to report, after having heard the Chapter and having received medical testimony, his opinion and the sentiments of his heart. The Bishop, diligently fulfilling this task, sent a medical certificate, which confirmed what Raphael had stated in his prayers. The Chapter considered it necessary to deny the indulgence, first, because of the mildness of the illness, since it was evident that Raphael could leave the house at will, either by day or by night, without regard for the changing weather; and second, because of his past negligence in the choral service, so that he had always been negligent in the exercise of his canonical duties for a period of approximately forty years, as evidenced by the choral books. The Bishop, after these facts were confirmed, continued, saying: "Given that the existence of the illness is established, the legal remedies by which he could and should have effectively availed himself were at the disposal of my predecessors, when the canon supplicant was still in his prime and in good health, but now, at this time, he is infirm, over seventy years of age, and..."

[*Latin ed. p. 216*]

216. Dispensations from attendance, besides the canonical provision for others, might seem inhuman when depriving someone of the means to lead an honest life, as it would add affliction to the afflicted. Therefore, in order that choral service (which the ordinary assigns for six days, or sometimes seven, depending on the circumstances of the time) may not be diminished, and that the prelate may not suffer any penalty for his previous negligence, I believe that, if this seems advisable to the Holy Congregation, his prayers should be granted, provided that the bishop may substitute another, even

Translated by churchlatin.ai, a product of Boyne Archives

of a lower order, from Clairac, who, with an equal salary established and paid by the aforementioned prelate in his absence, should assist in the choral office, etc.

OBSERVATIONS FROM THE OFFICE. It has been observed that, among the legitimate reasons for which any member of the choir, whether a canon or a beneficiary, may be excused from attending the choir, is a recent bodily illness, so that he who is detained by such illness should be considered present and should enjoy the full perception of the fruits; as is stated, omitting others, from chapter "On audiences, concerning those who do not reside," in the title "De Christ. non resid." and from chapter "unie," in the same title, in 6; and from chapter "u" of the aforementioned title, "De Praeben." For from these, not only the fruits of the benefice are received by the sick person, but also distributions, and in this matter, the interpreters of the sacred canons are in agreement, as stated in *Institut. eccl.*, 10/8, among the works of Benedict XIV. Similarly, the Holy Congregation has judged, as is shown from the aforementioned *Institut. eccl.*, 10/8, so that a sick beneficiary not only has the right to daily distributions, but also to an increase of distributions, which are lost by those who are absent from divine services, as in Viterbo, August 26, 1621; in Aquilana, March 14, 1739; in Tranen, June 26, 1745; in Cremona, September 12, 1750; and in other places. Indeed, to give an example, in Viterbo, on the day of distributions, March 14, 1739, there was a case of a canon who was afflicted with a cancerous ulcer in his right eye and other illnesses.

[*Latin ed. p. 217*]

Indulgences for absence 217, so that, because of his advancing age and the aforementioned illnesses, he might no longer be able to attend the choir: he petitioned the Bishop to grant him leave of absence, so that, although absent, he might still enjoy the canonical portion, the daily distributions, and whatever else would accrue to him if he were to serve in the choir, and the Bishop obtained permission for him with these words: "Having heard the account, we grant the Orator permission for absence, 'in order to attend entirely to his own health,' with the faculty, during his infirmity or treatment for the cause above mentioned, of receiving the canonical fruits and revenues, both from those established portions divided among the Reverend Canons of the Collegiate Church, as well as from those undivided and remaining with the Roman Chapter and its Procurator, with the obligation, however, of fulfilling the *turno animarum* of Masses and anniversaries, in the manner of other Reverend Dignitaries and Canons present and residing, expressly except being present at manual distributions, anniversaries, and at Tragiæ, funerals, and similar occasions, in which the intervention of the entire Roman Chapter is almost always required, because then only those present and attending benefit, according to the Decrees of the Council of Trent." But the same Canon later fled to the Holy See, requesting all

Translated by churchlatin.ai, a product of Boyne Archives

daily distributions and other emoluments, having been dismissed by the Chapter. Regarding the matter, the *Capitula ad Audientiam de Cleric. non resid.* and *Capitulum unicum eod. tit.* in 6 were consulted. The question raised was: "Whether the Canon Philip Ragone, given his infirmity, is entitled to the daily distributions and other emoluments of which mention is made in this case?" The Sacred Congregation responded: "Affirmatively, except for those distributions and emoluments which, according to the will of the testators, are due only to those actually present." Similarly, in L'Aquila, on June 16, 1745, after certain doubts were raised: "I. Whether and how the Archdeacon Francis de Carolis should be granted the Indult of which mention is made. II. Whether and with what emoluments he should enjoy." The response was: "Regarding I. Affirmatively, with the understanding that the Orator shall be burdened with the duties during his infirmities, at the discretion of the Bishop."

[*Latin ed. p. 218*]

218. Regarding Dispensations from Absence. Concerning II. All benefits are to be granted, except those which, either by the will of testators, or by the statute and custom of the Church, are due only to those actively serving, and others. Furthermore, in Cremona, on August 2, 1760, a case was considered concerning a Canon who, due to pain in his feet and a fracture of his bones, was unable to continue his service in the choir. From the beginning of his absence, he did not receive his daily allowances; then the Canons voluntarily gave them to him; afterwards, they denied him the allowance, forbidding him to leave the house, to walk, etc. Finally, certain doubts were presented before the Sacred Congregation. "I. Whether a dispensation should be granted for exemption from service in the choir and the Church in this case. II. Whether the daily allowances should be granted to Canon John Cadoni, which were due from September 1758 in this case." The Sacred Congregation responded: "To I. Affirmative, during the infirmity, and with the awareness of the petitioner. To II. Affirmative, according to the vote of the Bishop." However, the Bishop had voted that the petitioner's request should be granted, provided that the allowances, according to the law of the foundation, were not reserved only for those actively present. Nevertheless, it was noted that proof of the illness must be provided, as well as proof of previous diligence in attending the choir. And with regard to the first point, it must be proven by sworn testimonies of physicians; however, it is not necessary that the severity of the illness be pressing, but it is sufficient that a disease, though mild in itself, can become serious through exposure to the choir. Hence, the Sacred Congregation granted a dispensation to a Canon to be absent from the choir for Vespers and Compline, who suffered from asthma, from which he was more afflicted during the evening hours, in Eugubina, regarding the service of the choir, on August 23, 1738. Indeed, a prudent fear of impending infirmity

Translated by churchlatin.ai, a product of Boyne Archives

may excuse anyone from the choir. Barbos, De offic. Episcop. alleg. 33, n. 169; Pignatell., /. cons. 130, n. 13; Schmalzgr., de Clerk, non res. tit. 6.

[*Latin ed. p. 219*]

Indulgences for absence, number 219, paragraph 33: and this opinion was confirmed by the Sacred Congregation of Clerics in Caserta, in the Indulgences, on December 16, 1797. Regarding the second point, it was stated that those who, being in good health, neglect the choir do not deserve to receive the daily distributions; hence, in the customary indulgences for absence from the choir due to infirmity, a clause is usually added: provided that, before the infirmity, they were accustomed to serving; and there are also ancient examples of this: for example, in the case of Mantrana, on February 6, 1627, the Sacred Congregation of the Council responded: that the daily distributions should be given to the sick cleric only if he was previously accustomed to serving in the church, the justification for which is left to the conscience of the Bishop. And in Rieti, on September 12, 1667, the Sacred Congregation responded: that infirm canons should not receive the daily distributions for the first two hours, if they had not customarily attended. However, in the very case of the canon who requested the indulgence, there should be no deceit, although it must be determined whether the same deceit or, as they say, "punctura," existed in the case of January 8, 1862. Furthermore, it is not permissible in law for someone to represent another in the choir, as noted by the Bishop, as in Fulginata, on March 22, 1721, and in other cases, and Benedict XIV in the cited Institutions, 107, § 8, numbers 37 and 38. These matters, having been presented to the Sacred Congregation on September 16, 1871, and the questions regarding the custom having been carefully discussed, the Sacred Congregation responded: granting an indulgence for up to six months, and benignly granting the Bishop the power to freely grant this indulgence to whomever. FROM WHICH IT MAY BE GATHERED: I. That an infirm canon is, by law, exempt from choral service, and does not lose the right to receive the daily distributions and other emoluments that are customarily received by those who are present, except for those distributions to which the will of the founder or donor, or another particular and legitimate reason, would object.

[*Latin ed. p. 220*]

220. Dispensations from attendance II. It must, however, be established that there exists an infirmity, whether it directly prevents participation in the choir, or indirectly through necessary medical care, which must be prescribed by physicians. III. In cases of doubt regarding the legitimacy of the cause of illness, the Bishop shall be the judge, who, after receiving a sworn testimony from the physicians, may judge, according to the Sacred Canons and the circumstances, whether and how permission for absence

Translated by churchlatin.ai, a product of Boyne Archives

should be granted. IV. When granting such permission, consideration must also be given to whether the Canon, being ill, has been sufficiently diligent in the choir while in good health. V. Justice does not permit that a Canon who, while healthy, neglected the choir, should be considered present in the choir simply because he is ill. VI. A Canon who was negligent in his duties was granted a temporary dispensation to receive only the fruits of his benefice, and was requested to omit daily distribution. FROM THE HOLY CONGREGATION OF RITES in Rome, or Bologna. Concerning the canonization of the Blessed Joseph of the Cross, Confessor; regarding a doubt: Concerning what miracles are established in this case, and to what effect? DECREE. Christ the Lord, who, although rich, became so poor and humble that He had nowhere to lay His head, and who willed to be stripped of everything even unto death on the cross, was diligently imitated throughout his life by Blessed Joseph of the Cross. Although he came from a most honorable family, he nevertheless, despising all earthly things as if they were dung, was clothed in rags and tattered garments; his food was whatever was provided by some benefactor; he used the same drink as the beasts, namely, from fountains; and he...

[*Latin ed. p. 221*]

Decrees granted him twenty-two days, either in sacred temples, or in the Amphitheater Flavius; at night, however, in the porticoes and deserted forums of the city. Meanwhile, while his body was subjected to servitude, he was an example of all virtues, and thus, by constant contemplation, he directed his mind towards God, so that his conversation might be in heaven, where he sought to prepare an eternal dwelling for himself. Living in this manner, he became contemptible to the world, and saturated with the reproaches of the world's followers, he breathed forth his purest spirit with Christ crucified. But just as God the Father raised up from the dead His Son, our Lord Jesus Christ, and seated Him at His right hand in the heavens, and exalted Him, and gave signs and wonders to be done in His name, so too did the Blessed Benedict Joseph, by the power of wonders, exalt him above the stars, making him glorious among men. These wonders, having been brought to the attention of the Sacred Congregation of Rites by the ministry of the Holy Apostolic See, and after they had been investigated and confirmed, after the same inquiry concerning the virtues had been completed, the honors of the altar were decreed and granted to Blessed Benedict Joseph by our Most Holy Lord Pope Pius IX. Scarcely had he lived in the Basilica of the Vatican, after the veil had been removed, when the image of the Blessed Benedict Joseph appeared, surrounded by the splendors of heaven, and many new and extraordinary things were wrought by Almighty God, so that men might recognize that this servant of His had attained the height of heavenly glory in the triumphant Church; therefore, he is to be honored with greater reverence in the Church militant

Translated by churchlatin.ai, a product of Boyne Archives

by mortals, especially in this our time of perversity, in which men, having set aside heavenly treasures which are not seen, pursue the deceptive riches and pleasures of this world as their sole end, and exert all their strength to acquire them. Of these wonders, two were selected as more outstanding to be presented for examination by the Sacred Congregation of Rites. First, an examination was held in the Preparatory Congregation, with the Most Reverend Cardinal Constantinus Patrizi, Bishop of the Suburbicarian See of Ostia and Velletri, Dean of the Sacred College, and Promoter of the Cause, on the ninth day before the Kalends of June in the year 1870. Then, a second examination was held in the Preparatory Congregation, convened in the buildings of the Vatican, on the ninth day before the Kalends of May in the year 1872. Finally, a third was instituted in the General Congregations, convened in the same buildings of the Vatican, before our Most Holy Lord Pope Pius IX, on the thirteenth day before the Kalends of December of the same year. In these Congregations, when the Most Reverend Cardinal Constantinus Patrizi, the Promoter of the Cause, had proposed the question, "Of what miracles does it consist in this case, and to what effect does it pertain?", each of the Most Reverend Cardinals and Fathers gave expression to his opinion. But the Most Blessed Father, having seriously considered all that he had heard, did not immediately reveal his mind, but urged those present to offer fervent prayers to obtain light and counsel from the Divine Spirit.

[*Latin ed. p. 222*]

Decree 222. Finally, it was decided to pronounce the final judgment this day, concerning the cause of the Most Reverend Thomas, Archbishop of Canterbury, who merited the crown of martyrdom for defending the liberty of the Church, at the hands of the Lord. Therefore, after the Divine Host had been offered first in the private chapel of the Pontifical Buildings at the Vatican, having entered the more noble hall and seated himself on the throne, and having summoned to him the Most Reverend Cardinal Constantino Patrizi, Relator of the Cause, and together with the Reverend Father Lawrence Salvati, Coadjutor of the Promoter of the Holy Faith, and myself, the undersigned secretary, and with these present, he solemnly declared that there are two miracles of the second class, namely, the first, the instantaneous and perfect healing of Theresia Massetti from a scirrhous cancer in the left breast, and the second, the instantaneous and perfect healing of Maria Aloisia, a professed nun of the Immaculate Conception, from a cancer ulcerating the stomach, in the Venerable Monastery of the Divine Love at Monte Falisco. He ordered that this decree be made public and recorded in the Acts of the Congregation of Sacred Rites, on the fourth day before the Kalends of January in the year 1873. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. "S. D. Bartolini, Secretary of the Sacred Congregation. Rome or Bologna.

Translated by churchlatin.ai, a product of Boyne Archives

Concerning the canonization of the Blessed Joseph of the Sacred Heart, Confessor. REGARDING THE DOUBT: Whether, with the approval of two miracles obtained after the granting of the devotion to the aforementioned Blessed by the Apostolic See, it is safe to proceed to the solemn canonization of him? DECREE. The Blessed Joseph of the Sacred Heart, while living among men, was poor, humble, and contemptible; but after his death, he was taken up into the sublime heights of heaven, surrounded by the splendor of the Saints, and redeemed from the supreme Judge of merits with an incorruptible crown of glory, and placed in the seat of immortality. But, that he might be exalted even higher on earth than he had been humble, the Almighty King magnified him with the power of miracles, by which He made it known that this Blessed Man should be honored before men, whom He wished to honor before His angels. Obedient to the Divine will, the Most Holy Lord, our Pope Pius IX, after an examination instituted by the Congregation of Sacred Rites, decreed that...

[*Latin ed. p. 223*]

Decree 223, concerning two miracles, through the intercession of the Blessed Benedict Joseph Labre, confirmed by God. Nothing else was lacking, so that this most illustrious cause might proceed to its conclusion for canonization, except for a question to be proposed in the same Congregation of Sacred Rites, in order to inquire whether, with the approval of two miracles already established, it is possible to safely proceed to the solemn canonization of the Blessed Benedict Joseph Labre, after the veneration granted by the Apostolic See. Therefore, when this question was presented by the Most Reverend Cardinal Constantinus Patrizi, Bishop of Ostia and Velletri, Dean of the Sacred College, Prefect of the Congregation of Sacred Rites, and Relator of the Cause in the General Congregations before the Most Holy Lord, held in the Apostolic Palace at the Vatican on the nineteenth day before the Kalends of February of the aforementioned year, all those present, both the Most Reverend Cardinals and the Consultors, unanimously gave a positive opinion. However, the Most Holy Father postponed giving his judgment, and was urged by those present to offer prayers, so that the Divine Spirit might favorably enlighten him in his deliberation. Finally, in order to pronounce his decree, he chose the Sunday of the Seventieth Week: therefore, first he celebrated the divine Eucharistic Sacrifice in his private chapel in the Vatican Palace, and then, going to the grand hall, and sitting on the throne, he summoned the Most Reverend Cardinal Constantinus Patrizi, the Relator of the Cause, together with the Reverend Father Lawrence Salvati, Assistant to the Promoter of the Holy Faith, and myself, the undersigned Secretary, and, with them present, he decreed that it is possible to safely proceed to the solemn canonization of the Blessed Benedict Joseph Labre. This decree was to be made public, recorded in the Acts of the Congregation of Sacred Rites, and letters

Translated by churchlatin.ai, a product of Boyne Archives

Apostolic were to be issued under seal for the solemn canonization to be celebrated at any time in the Patriarchal Basilica of the Vatican, on the fifth day before the Kalends of February of the year 1873. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Rites. L, S. D. Bartolini, Secretary of the Sacred Rites.

[*Latin ed. p. 224*]

224. Decrees of Palermo. Concerning the Beatification and Canonization of the Venerable Servant of God, Brother Andrew of Burgio, a Lay Brother Professed of the Order of Friars Minor of the Conventual Observance of Saint Francis, of the Capuchin Fathers.

ON THE QUESTION: Whether it is established that the Venerable possessed the Theological Virtues of Faith, Hope, and Charity, in God and in his neighbor, as well as the Cardinal Virtues of Prudence, Justice, Fortitude, and Temperance, and their associated virtues, in a heroic degree, in his life, and to the extent of what is being considered?

DECREE: The Venerable Andrew of Burgio, from his childhood, began to fear God and to abstain from all sin; and when he became a man, he avoided childish things in his conduct, and, fleeing the company of men, desired to be enrolled among the Friars Minor Capuchin of Saint Francis. Assuming the religious habit, he put on the Lord Jesus Christ, and received the armor of God, that he might be able to resist against the powers of darkness, and to stand perfect in all things. Therefore, through the arms of justice, he presented himself as a pleasing sacrifice to God, in labors, in vigils, in fasts, in chastity, in long-suffering, in patience, in true charity: he loved all with fraternal love, and did not return evil for evil, but provided for the good, both before God and before men. He was fervent in spirit, rejoicing in hope, living by faith, patient in tribulation, instant in prayer, and always carried about in his body the mortification of Jesus, so that the life of Jesus might also be manifested in his mortal flesh. When, however, he had long contended in the arena of this world for the holy goal, he rested, that he might receive the crown of the heavenly vocation. Truly, the fame of his sanctity, which, while he lived on earth, especially because of the splendor of his remarkable charisms, was spread not only among his own, but even to the farthest shores of Africa, did not diminish in the darkness of the tomb; but rather, it increased. Therefore, the Ordinary Authorities of Palermo and Agrigento were instructed to conduct a process regarding the fame of the sanctity of the same Servant of God; which, after being approved by Apostolic authority, the Supreme Pontiff, Gregory XVI, on the tenth day before the Kalends of September, in the year 1835, signed with his own hand a Commission for the Introduction of the Cause. Then, letters of referral were granted so that an Apostolic process might be initiated. The validity of which, being declared by the same Apostolic authority, the examination of the heroic virtues was brought before the Congregation of

Translated by churchlatin.ai, a product of Boyne Archives

Sacred Rites; and therefore, a Preliminary Meeting took place in the halls of the Most Reverend Cardinal Constantine Patrizi, Bishop of Ostia and Velletri, Dean of the Sacred College, Prefect of the Congregation of Sacred Rites, and Relator of the Cause, on the fourth day before the Ides of July, in the year 1870. Soon after, a second examination regarding the virtues was held in a Preparatory Meeting, gathered in the Vatican halls, on the day before the Ides of.

[*Latin ed. p. 225*]

Decrees of September 22, 1871. Finally, the Virtues of the Venerable Servant of God, who had been called to the third order, were examined in the General Congregation before the Most Holy Pope Pius IX, the Supreme Pontiff, with those assembled in the Vatican buildings on the nineteenth day before the Kalends of February of the following year. In these Congregations, the Most Reverend Cardinal Constantinus Patrizi, Relator of the Cause, proposed the following question: "Does it pertain to the Theological Virtues of Faith, Hope, and Charity, both towards God and towards one's neighbor, as well as to the Cardinal Virtues of Prudence, Justice, Fortitude, and Temperance, and their associated virtues, in the heroic degree, in the case and to the effect of which we are speaking?" And the Most Reverend Cardinals, together with the Consultor Fathers, presented their opinions in an orderly manner. But the Most Blessed Father, considering the arguments and opinions of each, after offering prayers, in which he sought to be enlightened by the Spirit of Wisdom and Counsel in order to pronounce his judgment, designated this Sunday in the Seventieth Week. Therefore, after offering the Immaculate Host in his own chapel in the Pontifical Buildings at the Vatican, he ascended to the more splendid hall, and he summoned the Most Reverend Cardinal Constantinus Patrizi, Prefect of the Congregation of Sacred Rites and Relator of the Cause; together with the Reverend Father Laurentius Salvati, Coadjutor of the Promoter of the Holy Faith, and myself, the undersigned Secretary, and, with them present, he pronounced the following: "It is established that the Venerable Servant of God, Andrea a Burgio, possessed the Theological Virtues of Faith, Hope, and Charity, both towards God and towards one's neighbor, as well as the Cardinal Virtues of Prudence, Justice, Fortitude, and Temperance, and their associated virtues, in the heroic degree." He ordered that this decree be made public and recorded in the Acts of the Sacred Congregation on the fifth day before the Kalends of February of the year 1873. C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. >g S. D. Bartolini, Secretary of the Sacred Congregation. Naples. Concerning the Beatification and Canonization of the Venerable Servant of God, Maria Christina a Sabaudia, Queen of both Kingdoms of Sicily. DECREE. "In the cause of Beatification and Canonization of the aforementioned Venerable Servant of God, Maria Christina a Sabaudia, when it was necessary to deliberate in the Ordinary

Translated by churchlatin.ai, a product of Boyne Archives

Congregation of Sacred Rites concerning the validity of all the proceedings in this cause, at the request of the Reverend Lord William De Cesare, Abbot General and Ordinary, volume VII, page LXXVI, paragraph 15."

[*Latin ed. p. 226*]

Decree 226 of the Congregation of Benedictines and the Diocese of Nullius Montis Virginis, regarding this cause, the undersigned Cardinal, Prefect and Promoter of the aforementioned Sacred Congregation, proposed the following question at the Ordinary Sessions of the Sacred Rites held today in Vatican: "Whether it is established that the validity of the processes, both those conducted under Apostolic and those under Ordinary authority, are such that the witnesses have been duly and properly examined, and that the testimonies produced have been legitimately obtained, in the case and to the effect of which we are speaking." Furthermore, the Most Reverend Fathers entrusted with the safeguarding of the Sacred Rites, after a careful examination of all matters, and after hearing the Reverend Father Lawrence Salvati, Coadjutor to the Promoter of the Holy Faith, deemed it necessary to respond affirmatively on August 31, 1872. "The aforementioned matters were then reported to the Most Holy Lord, Our Pope Pius IX, by the undersigned Substitute of the Congregation of Sacred Rites, who, with a faithful report, deigned to ratify and confirm the judgment of the Sacred Congregation on September 5th of the same year."

C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of S.R.C.

L. % S.

For the Reverend Father Dominic Bartolini, Secretary,

Joseph Ciccolini, Substitute.

Concerning the inscription of the name of Saint Maximus, Bishop of Naples, in the Roman Martyrology.

DECREE. — "Having been recently approved by the Sacred Congregation of Rites and confirmed by the Most Holy Lord, Our Pope Pius IX, the memorable public and ecclesiastical cult of Saint Maximus, Bishop of Naples, who, shortly before the three hundred and sixty-sixth year, died in exile under the hardships imposed by Emperor Constantius, an Arian, for his outstanding confession of the Nicene Faith; the Most Reverend Cardinal Xystus Riario Sforza, Archbishop of Naples, earnestly requested the same Most Holy Lord to have the name of the aforementioned Bishop and Martyr inscribed in the Roman Martyrology, of which a new edition is now being prepared. "Furthermore, His Holiness, having heard the report on all matters made by the undersigned Secretary of the Congregation of Sacred Rites, and also having considered the specific opinion of the aforementioned Congregation of Sacred Rites, which was established to prepare the new edition of the Roman Martyrology, decreed and ordered that Saint Maximus be inscribed in the Roman Martyrology, with the following eu-

Translated by churchlatin.ai, a product of Boyne Archives

logy appended after that of Saint Asterius, namely: "At Neapoli in Chalastra, Sancti Maximi Episcopi et..."

[*Latin ed. p. 227*]

Decree 227 concerning the Martyr, who, for his zealous confession of the Nicene Faith, was exiled by the same Emperor Constantine and died there. "Notwithstanding any contrary opinions."

On December 19, 1872, Cardinal PATRIZI, Bishop of Ostia and Velletri, and Prefect of the Sacred Penitentiary, and L. Bartolini, Secretary of the Sacred Penitentiary, issued the following:

FROM THE SACRED APOSTOLIC PENITENTIARY:

"Although practice and prudence teach that hidden cases pertaining to the Forum of Conscience should be presented to the Sacred Penitentiary, in sealed letters and with names concealed, yet it sometimes happens that someone, whether from the ranks of confessors or pastors of souls, refrains from this practice, and instead exposes these cases in open letters, or even recounts them to lay procurators, in order that they may prepare petitions to be presented to the Sacred Penitentiary. This, indeed, is a matter that causes great concern and is clearly to be avoided. Therefore, the Sacred Penitentiary, desiring to eliminate this entirely reprehensible practice, instructs all confessors and pastors of souls..."

[*Latin ed. p. 228*]

228 The Monitum of the Sacred Penitentiary [Apostolic] gravely warns that everyone should completely abstain from the aforementioned method of recourse. Furthermore, if anyone wishes to have the actions of a Procurator in the venerable City [Rome] examined, they may deliver sealed letters to the Most Reverend Cardinal Penitentiary, and these letters, with the names suppressed, may be transmitted to the Procurator himself; however, they must never, in any way, dare to recount or reveal the aforementioned cases to the Sacred Penitentiary. "Given in the Sacred Penitentiary in Rome on [date]..."

1. CONCERNING AGREEMENTS FOR THE RESTITUTION OF METAL MONEY, EXCLUDING PAPER MONEY, IN ORDER TO COMPLY WITH CIVIL LAW, SUCH AGREEMENTS ARE INVALID. (We have seen these responses published in Catholic periodicals.)

"In the year 1860, when the government in that Lombard province had not yet imposed the compulsory use of paper money, Titus was loaned one hundred and twenty *aurei*, commonly called *marenghi*, by Sempronio, with the following conditions given and accepted, which in Italian are: 'The principal must be repaid in actual pieces of 120 pieces of 20 francs each, of proper weight and fineness, excluding any other substitute for money, that

Translated by churchlatin.ai, a product of Boyne Archives

is, negotiable public securities of any kind, bank notes, paper money.'"

Dies and *annus* are added each time this warning is sent by the Sacred Penitentiary. Such warnings, or even Instructions, which are sent by the tribunals of the Holy See without a specific date, if they must be cited later by the parties, should be cited using the initial words. For example, "The Monitum of the Sacred Penitentiary, which begins: 'Although the practice...'" The same applies to Instructions, for example, from the Holy Office, which do not have a date, such as the one I cited in Volume VI, page 456, the Instruction for proving the death of a spouse, which is the most recent and was approved by the Holy Office by Decree of Thursday, May 13, 1868. Since this Instruction does not bear a date, it is usually cited using the initial words: "The Instruction of the Holy Office, on the bond of marriage, for proving the death of a spouse."

[*Latin ed. p. 229*]

Regarding agreements concerning the restoration of metallic currency,
229 of any kind, and every other representation of money, whatever may otherwise be established by law, the debtor hereby renounces the faculty that the law might grant him to cease [making such payments]. "If, in any case, even contrary to such an express agreement, the debtor were authorized by law to pay with representations of money, and therefore the creditor were obligated to accept the corresponding payment, the same debtor obligates himself to return the equivalent value of said sum, not according to its nominal value, but in a quantity that is sufficient, through commercial exchange, to realize the aforementioned sum of actual 120 pieces of 20 francs, also in sound currency," and every related interest.

"These agreements, and the aforementioned loan, were granted by Sempronius up to this day; but now, Titio is compelled to return said sum, contrary to the agreements; that is to say, he does not wish to pay the metallic currency, nor to add the amount currently required so that the paper money, according to the difference, commonly called 'agio,' would be equivalent to the gold; he brings forward this reason, that the civil law, by decreeing that paper money should be accepted by all in place of metallic money, has declared the preceding agreement concerning the restitution of the principal sum and the payment of the loan to be made in metallic and not in paper coins, utterly invalid."

The Italian words, translated into Latin, are as follows: "The sum to be restored shall be in 'the same monetary species, that is to say, in 120 gold coins (commonly called 'marenghi'), of just weight and fineness, excluding any other sound currency, or public titles, of any kind, which are in commerce, or any other form of money, or anything else that represents money, even if otherwise established by law, the debtor renouncing the faculty that the law might grant him. 'If there should arise a case, even in violation of the faith of such an agreement, in which the debtor has the power by law to

Translated by churchlatin.ai, a product of Boyne Archives

pay with a representation of money, and therefore the creditor is obligated to accept it, the debtor himself obligates himself to return the same value of money, not indeed according to its nominal value, but in a quantity that is sufficient, through commercial exchange, to obtain the aforementioned sum, that is to say, 120 gold coins, and each interest, which must also be paid in sound currency.'"

[*Latin ed. p. 230*]

Concerning the laws of Patti, number 230, regarding the restoration of metallic currency. In the article of the law promulgated in Florencia on May 1st, 1860, concerning the matter under discussion: "Article 3. The notes of the Bank shall be given and received as cash for their nominal value in all payments made within the State, both between the public treasury and private individuals, companies, and moral bodies of every nature, for any purpose and also in payment or settlement of taxes or loans, as well as between private individuals, companies, or moral bodies of every nature, reciprocally, notwithstanding any contrary provision of law or conventional agreement."

"For the guidance of souls, the following questions are posed: "I. Does a simple condition attached to a promissory note, stating that the debt is to be paid only in cash, lose its force even in the forum of conscience, due to a subsequent civil law that renders it invalid? And, if so, to what extent? II. Can Sempronius, in this case, that is, through special conditions as stipulated above, safely conform to this law, which is beneficial to him, when this law, even with these conditions attached, would be upheld for him in the external forum?

"Your Eminence, etc.

"Comi, four days before the Kalends of January, 1872.

"The Sacred Penitentiary, having maturely considered the proposed questions, responds: "To the first: Regularly affirmative, unless particular circumstances are present, which must be considered in specific cases, after they have been carefully explained.

"Furthermore, the following article of Italian law is translated into Latin: "National monetary notes shall be given and received as cash, according to their nominal value, in making payments within the state, whether between the public treasury and private individuals, companies, and moral bodies of any kind, and for any purpose, even in the payment or settlement of taxes or debts, either in whole or in part; or reciprocally between private individuals, companies, and moral bodies of any kind, notwithstanding any contrary provision of law or conventional agreement."

[*Latin ed. p. 231*]

Concerning agreements "in tenor of the second: of the law, concerning which restitution is considered in the case, metallic money in quality of

Translated by churchlatin.ai, a product of Boyne Archives

things, 231 and also considering the negative." "Given in Rome, in the Holy Penitentiary, on the 2nd day of January, 1873."

From which you may gather:

I. Agreements added to a contract concerning restitution, which are to be carried out only in metallic money, regularly lose their force, even in the forum of conscience, because the subsequent civil law invalidates such agreements.

II. It is indeed just that, for the public good of society, whenever it requires it, the rights of private individuals be superseded by civil authority.

III. Although the civil law cannot render such agreements null and void for the public good, it does not seem to follow that the debtor is absolved from making compensation to the creditor in the case where he gives something of lesser value through the payment of money of a lower quality than that which was agreed upon in the contract, if private justice, to which the contract was added, demands it, and if public justice is not harmed by this compensation.

IV. Often, private contractual justice goes beyond the law itself: for example, it may stipulate that paper money is worth 1, 2, 1. But one may ask, what is the law if the public good does not require it, and yet the civil law insists? I answer, if it is not clearly established that the law is unjust, one must adhere to the law. But if it is clearly established that the public good is nothing other than an empty name under whose pretext rulers impoverish the people, then I do not believe that the law has the power to bind in the forum of conscience; for it would be a tyrannical law. There are many examples of this in the present social order. I have given you, for example, metallic money, or something else, which has been valued according to the value of metallic money, with the agreement that you restore it to me or give me the price in metallic money. If the civil law, by invalidating the agreement, allows you to restore or give me paper money of lesser value, private justice demands that you add the amount by which the metallic money is valued in commerce. For this is what the equality of the contract requires: between what is given and what is received. By this, however, public justice, which allows you to restore the paper money, is not harmed, since I do not refuse that money. I confess that in a just government, there are laws for the public good which require me, even at some loss to myself, to accept paper money in its nominal value in place of metallic money.

[*Latin ed. p. 232*]

Concerning the agreements at Patti [Patti] 232, regarding the restoration of metallic currency (an invention of our age), these are to be considered of the same value as gold or silver coins: although, it must be understood that its value can only be that of a representative of real money. Consequently, free commerce among men comes into play, which, depending on

Translated by churchlatin.ai, a product of Boyne Archives

the circumstances, is often compelled to value it much less than real gold or silver coins, or even copper coins, notwithstanding the aforementioned civil law, which is not considered to be violated by this. V. However, in order that the agreements, of which we are speaking, may be said to be abrogated by civil law, it is necessary that the meaning intended by the law be demonstrated by the words of the law: for it is not sufficient that the law generally compels the acceptance of paper money, if it does not expressly abrogate the agreements as well. VI. Indeed, it is not sufficient if the law abrogates the agreements with generic terms, when the agreements, by their very nature, are such that generic terms of abrogation are avoided; for agreements retain their force, as long as they are not demonstrated to be included within the law. VII. In the matter considered, given the generic terms of the law; considering the agreement, which consisted entirely of the restoration of money in the very same species, excluding any other species of money, specifically paper money if it were introduced, even if compelled by law, this agreement is not considered to be included within said law. For the species of money entered into the agreement, just as any specific object. 1 2 1 We see this in our age, as a rule established by the very fact itself, through the distinction immediately introduced, between representative money and real money: for the value of the former, which is called nominal, depends on the estimation of those who engage in commerce, so that it may have a greater or lesser estimation, according to the circumstances of public and private affairs. Hence, those who engage in commerce, especially between different nations, in order to determine a stable value in their contracts, add a clause, which is almost always understood, regarding payment in gold coins, as if they possessed a firm value; but it does not matter whether the payment is made in specific gold coins, or in representative money increased by as much as is required to purchase gold coins according to the current estimation. See Appendix IV which follows. 2

[*Latin ed. p. 233*]

Appendix IV 233 APPENDIX IV. Concerning private agreements regarding the restitution of metallic money, excluding paper money, which agreements are rendered invalid by the civil government, although illegitimate. This case is similar to one discussed in the Sacred Penitentiary, and another presented before the Sacred Roman Rota on July 5, 1850, before Avella, entitled "Rome, concerning the nullity of a real offer." I will present such a case, adding some difficulties that arise at first glance when dealing with civil laws enacted by illegitimate governments; and I will endeavor to resolve them. The Rotal case, in summary, is as follows: SUMMARY OF THE FACTS. Gertrude, as guardian of her children, granted a loan of 1500 gold and silver coins to Alexander in 1845, under a title of a four-year loan with agreed-upon interest. Alexander promised to make restitution, offer-

Translated by churchlatin.ai, a product of Boyne Archives

ing three of the same coins of just weight and current value, excluding any other type of currency of lower value, and specifically excluding paper money and representative money that could be introduced into commerce, even by supreme law, sending a special notification of this law and renouncing, by a solemn oath, any laws that might derogate from such renunciations, to which derogation he also renounced by repeated oath. Furthermore, if paper money were to be completely accepted, a clause of equalization was added, that is, to reintegrate the same persons for any difference that might occur between said money and that which would have been forcibly accepted. After the subsequent republican frenzy in Rome, usurpers of the Papal government issued a large amount of paper money. Alexander, the debtor, having restored the money to the Papal government, but with the republican paper money still in circulation, on July 14, 1849, offered Gertrude the sum of 1584.80 scudi, that is, 1500 scudi for the principal, and the remainder for interest; but he offered it not in gold and silver coins, but in republican paper money, and furthermore, he would make an equalization of value. Gertrude refused the offer; but Alexander brought the case before the civil tribunal, in order that the real offer be declared valid. But, struck by an adverse judgment, which declared the real offer invalid, he appealed to the tribunal of the Sacred Roman Rota, where he likewise suffered defeat: the formula of doubt proposed was: "Does it pertain to the validity and efficacy..."

[*Latin ed. p. 234*]

234 Appendix IV: "Concerning the validity of a real offering, so that it may be considered a deposit in the case." The Fathers have written: "Not in all cases." The reasons which moved the tribunal of the Holy Rota to judge in this way are those which follow. In giving an account of the sentence delivered, as is customary in the Holy Rota, it was noted that the offering was made by Alexander, at a time when he was still engaged in commerce with the republican paper currency, before, that is to say, the legitimate Pontifical Government enacted a law regarding its value, as it subsequently did on August 3rd of the same year, 1849, by which law, having again declared all acts carried out by the usurpers to be null and void, the republican paper money was admitted only by the generosity of the Holy Pontiff, but with its nominal value reduced to 65 for every hundred. Therefore, it was noted that whatever might have been disputed, if the offering had been made after this Pontifical law, as well as whatever might be disputed concerning the Pontifical treasury notes, could not be applied to the present controversy. Thus, the controversy being limited to the time when the republican paper money was still in circulation, albeit under duress, it was noted that there was a clear agreement by which Alexander, who had not received paper money but gold and silver coins, had promised to return the same kind of money, excluding by means of a

Translated by churchlatin.ai, a product of Boyne Archives

rule any other kind of money of lower value, and specifically paper money and representative money, and furthermore, he had promised not to return paper money even if the law compelled him to do so, sending a messenger with such a law, under oath, even if the law contradicted the agreement, and finally, if paper money could in no way be refused for the purpose of payment, he had once obstructed it. With such an agreement in place, the nullity of the offering made in republican paper money became evident to all; moreover, as it is not possible to pay one thing for another against the will of the creditor (1.2 ff. on credit matters), he could not have made such an offering without violating the agreement and without impiously breaking the sanctity of the agreements. It is, however, well known that there is a significant difference between the case in which no particular type of money is specified in the obligation, and the other case in which a certain and determined type of money is established. In the first case, since no specific type is mentioned, all types suitable for use are considered, even those of the lowest and smallest value, as the Holy Rota stated in Rome in the assignment of June 15, 1802, § 6, before Resta; in the second case, the type of money established by the agreement must be paid, since to deviate from the agreement is entirely impermissible, as affirmed by the Holy Rota in Perugia, Pecun. March 16, 1803, § 2, before Serlupi; in Iesi, Pec. July 4, § 4 and 7', cor. ibid. To this, Alexander, with misguided zeal, attempted to object, arguing that he could not have refused the republican notes offered by him because he was compelled to do so.

[*Latin ed. p. 235*]

Appendix IV 235: concerning the circulation which these [paper money] possessed in commerce. Indeed, the compulsory circulation of any currency can be achieved by ensuring that it cannot be refused when a certain type of currency is not included in the obligation, as was the case in the Decision of Kosso regarding the real offering, January 25, 1850, before De Silvestris (which judged the real offering completed with republican tickets to be valid, because it concerned a simple obligation, with no agreement whatsoever regarding the return of a specific type of currency); but it can never compel a creditor, who has prudently protected himself by a clear agreement regarding the return of a specific type of currency, to accept it unwillingly, if he wishes to specifically exclude paper money from the return. Nor is it sufficient that such currency has received compulsory circulation by law, so that it can adequately fulfill the initial agreement: but it was necessary that the law completely invalidate the force of the agreement when ordering compulsory circulation; if the law does not do so, the payment must be made in the identical species promised, even if it has become rarer, or if it no longer exists according to its estimation, as in the case of the Sacred Roman Rota in Iesi, concerning money, July 4, 1803, § 4 and following, before Serlupi, and in the Roman monetary matter of

Translated by churchlatin.ai, a product of Boyne Archives

January 11, 1805, before Resta. However, the republican law, in issuing the tickets, did not at all derogate from the agreements, in which it was explicitly stipulated that a certain type of currency was to be returned; therefore, the creditor was justified in refusing the offering. Nor can Alexander infer a derogation of the agreement from the fact that the law enacted regarding republican tickets ordered that these tickets be replaced by Pontifical tickets, *Boni del tesoro*; and therefore, the same derogation of the agreements does not exist by virtue of the substitution for those same republican tickets, which were ordered to be used for Pontifical purposes. But what should be considered if the substitution had truly been maintained, it is unnecessary to inquire: for it is sufficient to note that the promised conversion or substitution was never actually carried out: since the Pontifical tickets remained, as before, in their former standing, and the republican tickets, to the sorrow of all, flowed out most abundantly. Therefore, it must be held that the real offering made by Alexander was entirely invalid, since it was made in open violation of the agreement. But even supposing that Alexander had the right to compel the unwilling creditor to accept these paper TICKETS, the offering...

1. Before the republican government, on April 20, 1848, a Pontifical law was enacted, which ordered that paper money, *Boni del tesoro*, be accepted at its nominal value, notwithstanding any agreement to the contrary, but these tickets were more valuable than gold or silver because of the collateral that the Pontifical government provided, and this currency yielded interest. However, the paper money issued by the intruding republican government substituted for these Pontifical tickets under the same conditions, but it provided no collateral and yielded no interest.

[*Latin ed. p. 236*]

236 Appendix IV: It is to be declared that a contract made under duress from another source is null and void, that is to say, that it does not constitute a valid or complete sum. Surely, no one is ignorant of how much less valuable the republican paper money of that time was compared to gold and silver coins: but Alexander, with an agreement for equalization, promised to compensate for the loss, if he were forced to accept paper money from the creditor. Therefore, even in this case, he ought to make amends for the loss, which the creditor would suffer by receiving a less valuable currency in place of the more valuable gold or silver, as stated by the Sacred Rota in the aforementioned judgment, Aesina, July 4, 1803. Thus far, the Sacred Rota. Many questions could be raised for the sake of instruction: and the first that appears to the surface is: how can an obligation be incurred in the forum of conscience, when both the paper money has been issued not by the legitimate Prince, but by the usurping Republic? Is not the right to issue money the proper right of the legitimate Prince? And if it has not been issued by the legitimate Prince, but by an illegitimate authority,

Translated by churchlatin.ai, a product of Boyne Archives

and the money itself is illegitimate, how can satisfaction be rendered in the forum of conscience through it, in a contract which even excludes legitimate paper money? Why, therefore, did the Sacred Rota consider other reasons to decide that, in the case in question, the contract had not been rendered null and void by the laws of the Republic? 2°. Assuming, even, that a contract excluding restitution in paper money cannot be rendered null and void by legitimate authority for the sake of the public good, it may be asked, whether the same right belongs to an illegitimate government: for the acts of such a government are null and void by law, just as the restoration of things unjustly taken is declared null and void by the legitimate Prince. Therefore, it does not seem that it is possible to restore, in the forum of conscience, against a contract which has been declared null and void by an illegitimate government, which does not have the right to command. To the first, I reply that the right to issue money is the proper right of the legitimate Prince, just as the right to rule and govern the civil society is the proper right of the legitimate Prince. Therefore, the right to issue money should be considered in the same way as other acts of civil jurisdiction pertaining to the governance and administration of society. If, therefore, such acts of civil jurisdiction of the Prince or the usurping government can in some way obligate in conscience, there is no reason why the same should not be said of the acceptance of illegitimate money, which will become clearer from the following response. To the second, it seems that the right to rule and govern civil society is so connected with society, that it adheres to the very concept of civil society: for civil society is not understood, nor can it exist, without the right to command: for if the right to command is removed, nothing can be conceived of but an unordered aggregation of men, which, given the nature of men themselves, could not long endure; and which would not be a civil society, nor would it deserve to be called a society of men, the very concept of which is entirely juridical. Just as men are naturally born and made...

[*Latin ed. p. 237*]

Appendix IV 237: To the association, it ought naturally to be subject to the right of command, without which human society cannot exist. But nature, speaking generally, has not determined the subject to which the right of command must belong, nor has it determined the external form of government; rather, it has left this to be determined by some human act, which confers a legitimate title to command, much in the way that jurists speak of the norms of ancient Roman law concerning the ways of acquiring ownership of things. I said "much in the way," because human society cannot be considered as a material thing, since it has rights and duties towards the Prince, and the Prince has very important rights and duties towards society. These mutual rights and duties are such that, if the Prince, even if legitimate, should act badly, and whether through neglect of his duties or

Translated by churchlatin.ai, a product of Boyne Archives

through erroneous principles, should lead society into anarchy, if he were therefore expelled from his throne, I believe that he would forever lose the title to govern and rule the society; so that anyone who should rise up and take the reins of society into their own hands, and govern it according to the principles of eternal justice, would be the legitimate Prince, although he had no title to rule from any dynasty. For society is not for the sake of the Prince, nor for the benefit of the Princes; but, on the contrary, the Prince is for the sake of society, and if he leads it into anarchy, he is to blame, and he will no longer have the right to expel another who takes the reins of society and governs according to the order of justice; for that person would be the legitimate Prince. Now, if there is a legitimate Prince who governs and rules the society, and another is unjustly substituted in his place, usurping authority, although that Prince is illegitimate, he nevertheless exercises authority, which is naturally connected with society; and this authority, insofar as it is a right naturally connected with society, cannot be called illegitimate; it is the exercise of authority that is called illegitimate, when it is exercised by one who does not have a legitimate title to exercise it, and who is therefore unjustly in power. Therefore, all acts of jurisdiction are justly called illegitimate, considering the person who performs them, or in whose name they are performed, since they are performed by one who unjustly possesses authority; nevertheless, they do not cease to be acts of public authority. Insofar as they are acts of authority, if they are just, or if they are rightly directed towards the public good of society, they bind the subjects, even in their conscience. And in this sense, the Holy Rota has responded not once, as, for example, in the case of the Roman letters of exchange of June 27, 1800, § 12 before Valle: to a similar objection raised, it responded in this way: "But it would be worse to say that the promissory note was signed under the authority of those to whom there was no legitimate authority" (namely, during the French invasion). "Indeed, it must be noted that the administration of the invaders also had authority; namely, by reason and by right of possession; from which it undoubtedly follows that..."

[*Latin ed. p. 238*]

238 Appendix IV: "The act of governance, which is exercised, does not proceed from a right of kingship [that is, from a 'legitimate title to rule'], which does not exist, but from the fact of possession (insofar as public authority is exercised by the administration of the conquered), and therefore has the power to bind." This pertains to the second difficulty proposed; but from these statements, many other consequences follow, which it is not possible to discuss here. It follows that the authority to rule does not reside in the people; for if the people were the subject to whom the right to rule inherently belonged, this very right to rule would be reduced to nothing. Nor could it be shown that the right to rule is connected with so-

Translated by churchlatin.ai, a product of Boyne Archives

ciety. For the existence of this right is demonstrated by the fact that society, to which men are naturally drawn, cannot be conceived or exist without a government, which maintains the society in its being; but if the society itself were the government, or if the people were naturally the Prince, the right to rule would be an empty term. For the people would be both subject and ruler, and the object governed, which excludes any concept of authority and simultaneously destroys the nature and essence of human society, reducing it to a material, unordered aggregation of men, like beasts. Perhaps someone might object, for example, that a republican government is said to govern in the name of the people. For in a republican government, it is said that the people have the authority, which they confer upon another, who exercises it in the name of the people, and therefore it seems that the people can be the subject in which the right to rule resides. But in this objection, there is an equivocation; the right to rule is confused with the right to designate a person and the external form of government. In the people who are governed by a republican government, there is the right to designate a person who legitimately occupies the right to rule, and there is the right to limit the external form of government in many ways; but the person designated, by that very designation, occupies the right to rule, which in no way depends on the people, and which is ultimately nothing other than a certain derivation from the Divine Authority, by which God is the supreme Lord of the entire society. Therefore, the republican people do not grant, nor can they grant, the right to rule, which they do not have, but designate a person and place that person in the right to rule. From this also follows: in our time, in which it is said and taught that the people are their own Prince, authority itself is denied. And when it is said that the people grant their principate to others, so that they may govern in their name, they grant no authority. And when it is said that the Prince is nothing other than the first citizen, it is correctly stated in terms of numerical order. And when it is said that the Prince is a sacred person, it is an error: for the person of the Prince cannot be sacred, unless he has the right to rule, which is a derivation from Divine authority; but the people cannot make him sacred, since they cannot grant any authority. How, then, is the immutable order of justice subverted in the present social order?

[*Latin ed. p. 239*]

Appendix IV 239 and the entire argument rests upon fictitious and erroneous ideas, which necessarily lead society into ruin. But this can be refuted: if, in the present order of society, authority is denied by the very fact that it is said that the people grant their principate to others, who govern in their name; and if the people have no authority, then no authority will exist that can obligate in conscience. I answer: it is one thing to say and teach; it is another thing to alter the immutable order of justice. It can be said and taught that the sun does not shine, or that it does not govern

Translated by churchlatin.ai, a product of Boyne Archives

the planetary system, but is governed by the planets; but this does not mean that the sun will cease to shine, or that it will change its established relationship with the planets. Certainly, if one were to judge, according to the social doctrine taught by demagogues, the acts of authority, and the way they are understood, could not obligate in conscience, since they would be devoid of true authority: but since this is merely the doctrine of demagogues, and it is not certain that those who govern by force understand the matter in such a way that they perform only external acts to which true obedience is not due (which should not be surprising, for it is difficult to resist the order of nature, even though it is contradicted in words), those who are governed must obey just laws, and those that rightly tend to the public good. But, if things were to proceed to the point where those who precede the people in any way, would govern the republic with such intent and conviction, as to deny any obligation to obey in any human being, and would not admit or recognize any obedience other than that which force compels, I would believe that any obligation to obey in conscience would cease. And this should not be surprising: for, as the Authors teach, even in a legitimate government, laws can be enacted that are merely penal; much more, therefore, can those laws be considered merely penal, which are enacted by an illegitimate government with the conviction that there is no obligation to obey in conscience. In such a case, if legitimate agreements were violated, faith in agreements could not be neglected by private individuals. And it seems to me, if I am not mistaken, that even St. Rota considered this, albeit obscurely, in a previous decision, when he limited the question to the time when paper money of the republic was still in circulation, not yet recognized by the Pontifical Government in the restoration, and when he responded to the objection drawn from this, that paper money of the republic had been substituted for Pontifical bonds, *Boni del tesoro*. For from such a government of society, nothing can arise but the universal destruction of things, and no public good, except that which private necessity suggests for the sake of protection. You see what I have written about these matters in Vol. VI, p. 247 and following, concerning popular aspirations.

[*Latin ed. p. 240*]

Regarding the power to absolve, 240 etc. CONCERNING THE POWER TO ABSOLVE, WITH RESERVATIONS MADE IN THE PRESENT JUBILEE. To the Most Reverend Father, From the Diocese of Novocomensis, certain questions have arisen among some of the priests, which I earnestly request Your Eminence to resolve for the tranquility of consciences. Titius, after having obtained the Indulgence of this Jubilee several times, has fallen into a reserved censure. Hence, the following questions are posed: I. Can he be absolved by his confessor, considering that he has never been ensnared in any reserved censure in previous confessions, and therefore

Translated by churchlatin.ai, a product of Boyne Archives

has never availed himself of this jubilean privilege? If the answer is affirmative: II. Must Titius again perform the works prescribed in order to obtain the Jubilee? III. Should the solution that Your Eminence deigns to offer be considered a general rule to be followed in other Jubilees as well? Comi, January 1st, in the year of Our Lord 1873. The Sacred Penitentiary, concerning the above, responds: To I and II: Affirmative; To III: Adhere to the Apostolic Letters. From WHICH YOU MAY GATHER: I. That the Plenary Indulgence, granted in the manner of a Jubilee by Apostolic Letters of April 11, 1869, which are still in force by Apostolic Letters of October 20, 1870, can be obtained as many times as the prescribed works are repeated. 1 1 You will find the Apostolic Letters of April 11, 1869 in volume IV, pages 502 and following. And you will find the Apostolic Letters, which, although the Vatican Council was suspended, extend the Jubilee, in volume VI, pages 65 and following.

[*Latin ed. p. 241*]

Regarding the faculty of absolution, etc. 241 II. However, the Indulgence granted in the same Jubilee year, by which one may be absolved by any confessor in the forum of conscience from any reserved sins (except for the absolution of a complice in a detestable sin), is granted to the penitent only once. III. Therefore, if someone has duly obtained the Jubilee Indulgence more than once, but has never been entangled in a reserved sin, if, while the Jubilee still lasts, he falls into a reserved sin, he can be absolved by any confessor after performing the prescribed works. IV. Although, when dealing with an Indulgence granted in the manner of a Jubilee, there are certain rules that are usually common to each Jubilee, these rules cannot prevail over the Apostolic Letters, which are issued each time, if they do not agree with the Apostolic Letters, or if they perhaps signify something different from the mind of the Pope through authentic responses. 1 1 These are derived from the Apostolic Letters of April 11, 1869, § Furthermore, through the words: and only on this occasion, which were more fully declared by the response of the Holy Penitentiary, which you have among other things in vol. V, p. 32: for it had been asked: "Can someone who, during the Jubilee, has been absolved from censures and reserved sins by the power of that same Jubilee, if he falls again into reserved sins and censures, be absolved a second time by performing the prescribed works again?" The response was: No. A similar response was given by the Holy Congregation of Indulgences, which you have in vol. IV, p. 675. It had been asked: "Considering the clause, 'on this occasion only,' is it possible for someone who has fallen into censures and reserved sins to be absolved only once, as decreed by Benedict XIV in the Constitution *Inter graviores*: or can he be absolved as many times as he incurs reserved sins and censures during this Jubilee?" And the response was: Affirmative to the first part, negative to the second. Conversely, regarding the other question proposed

Translated by churchlatin.ai, a product of Boyne Archives

to the Holy Penitentiary, loc. cit. "Can someone who has already obtained the Jubilee Indulgence for the first time obtain it again if he repeats the prescribed works?" The Holy Penitentiary responded: Affirmative. The reason for this second response is sought from the general rule, according to which, if there is no limitation in the granting of Indulgences, either explicitly or implicitly, the Indulgence can be obtained as many times as the prescribed works are repeated. See the Decree of the Holy Penitentiary of February 29, 1864, which you have in vol. I, p. 116, and the other things added there. Acts, vol. VII, section LXXVI. 16

[*Latin ed. p. 242*]

242 Concerning the Fruits of the Pious Society: FROM AN AUDIENCE WITH THE HOLY FATHER. Concerning the fruits of the pious society entitled, "The Apostleship of Prayer." SUPPLICATION. Most Blessed Father, "Henry Ramier, General Director of the Apostleship of Prayer, prostrate at the feet of Your Holiness, offers a small portion of the countless prayers, sacrifices, and pious works which the members of this society, but especially the boys and girls belonging to the pontifical militia, have offered in recent months, in order to obtain the triumph of the Holy See and the Catholic Church. "Indeed, this pontifical militia is a particular practice adapted to the age and nature of children, by which younger Christians are encouraged to defend the Holy See with their own means, especially through frequent Communion, and through spending as many hours as possible in diligent work and perfect observance of the rules. "Already, hundreds of thousands are numbered who, in various parts of the world and in educational institutions of both sexes, have joined this militia; and everywhere this pious practice has produced abundant fruits. For, as the frequency of the sacraments and the observance of scholastic discipline are renewed in these institutions, so too is the love of the Church increased, both among the students and also among the teachers, the students' parents, and devotion towards the Holy See; and through the exercise of this spiritual militia, young people are prepared with more effective weapons to fight in the Lord's battles. "In order that these fruits may grow daily, and that this our seminary of defenders of the Holy See may be enriched with new abundance, your humble supplicant earnestly requests: First, that Your Holiness would deign to bestow your blessing upon the decorations or insignia which, in order to reward the efforts of the soldiers and to encourage their generosity, are to be conferred upon them by the teachers, according to the degree of merit, with the understanding that those who are decorated with these insignia will renew their promise to never refuse to give their names to societies condemned by the Church, and to always defend the rights of the Holy See. "Secondly, that those who have been honored with these decorations, on the very day that they receive them,

Translated by churchlatin.ai, a product of Boyne Archives

and also at the point of death, may receive the pontifical blessing."

[*Latin ed. p. 243*]

Concerning the fruits of the pious society 243, those who perform its works may enjoy the plenary indulgence, either granted by the moderator of the military order, or by their own confessor; and furthermore, those who, until the end of their studies, faithfully fulfill the duties of the military order, and therefore receive the highest decoration, may communicate this aforementioned privilege to their parents in the first degree. "Thirdly, that all who perform the pious practices of the pontifical military order may obtain the plenary indulgence, first on the day on which the association is established, around the beginning of the academic year; and subsequently, on the feasts of the Chair of Saint Peter in Rome (January 18th); of Saint Leo (April 11th); of the Blessed Virgin Mary, Help of Christians (May 24th); and of Saints Peter and Paul (June 29th)." "Fourthly, that in order to obtain these indulgences, no other association or enrollment is required than that which is necessary to enter the society of the prayer of the Apostles, of which the pontifical military order is a special practice; so that in all houses of the prayer of the Apostles, the pontifical military order may be established." From the Audience of His Holiness, on April 21, 1870. "His Holiness, our Lord Pope Pius, by Divine Providence, PP. IX, having referred me to the aforementioned Cardinal Prefect of the Sacred Congregation for the Propagation of the Faith, after having considered the matters presented, graciously ordered that the following be written: To I. According to the request. To II. Affirmative, with the due legal provisions observed; and concerning the indulgence to be obtained at the hour of death, provided that the Holy Name of Jesus has been duly invoked, at least in the heart, if not with the mouth. To III. Affirmative, with the aforementioned legal provisions observed. To IV. Affirmative. Contrary opinions not at all hindering. < Given in Rome, from the offices of the Sacred Congregation, on the aforementioned day and year." A.L. Cardinal BARNABÒ, Prefect. "The present Rescript was presented in the Secretariat of the Sacred Congregation of Indulgences on this day, February 15, 1873, in accordance with the form of the Decree of the same Sacred Congregation, dated April 14, 1856. In witness whereof, etc." Dominic Sarra, Substitute.

[*Latin ed. p. 244*]

Letter 244. Encyclical of His Most Holy Lord Pope Pius IX.

ENCYCLICAL LETTER Addressed to the Patriarch, Archbishops, Bishops, Clergy, and People of the Armenian Rite, enjoying the Grace and Communion of the Apostolic See.

TO THE VENERABLE BROTHERS, ANTONIO PETRO IX, PATRIARCH OF CILICIA, ARCHBISHOPS, BISHOPS, AND TO OUR BELOVED SONS, THE CLERGY AND THE PEOPLE OF THE ARMENIAN RITE, ENJOYING

Translated by churchlatin.ai, a product of Boyne Archives

THE GRACE AND COMMUNION OF THE APOSTOLIC SEE.

PIUS IX, POPE.

VENERABLE BROTHERS AND BELOVED SONS, GRACE AND BLESSINGS.

I. It is now the fourth year since We, on those most sacred days when a new star shone forth for the enlightenment of the nations in the East, dispatched Our Apostolic Letters to the Easterns, in order that We might confirm the Catholics in the faith, and those who are, to their sorrow, outside the Catholic Church, might be brought back to the one fold of Christ. And We were filled with joyful hope that, with the help of God and our Savior Jesus Christ, the purity of the Christian faith might spread more widely, and the study of ecclesiastical discipline might flourish anew in the East; to which end, and in order to bring it into conformity with the sacred canons,

1. If you seek the Acts of the Holy See which pertain to the Armenian schism from its beginning to the present, you will find them in Vol. V, pages 444 and following; pages 500 and following; page 572; and in Vol. VI, pages 273 and following. Also, consult the Acts of the Secret Consistory, which I have fully explained in Vol. III, pages 337 and following, where you will find page 386 the famous Bull *Reversurus*; and other Apostolic Letters, the Commission, ibid., page 394. Also, if you wish, consult what was established after the Bull *Reversurus* in the Babylonian Patriarchate of the Chaldeans, which you will find in Vol. V, pages 376, 380, and 615. The beginning of these matters was given on the 6th of January, 1848.

[*Latin ed. p. 245*]

The Encyclical Letter 245 promised to strengthen our authority. How much concern we have felt for the Orientals, and with what spirit of charity we have pursued them, God knows: but what we have accomplished in the end, all know; would that all might also understand it properly! But it has been made manifest by the inscrutable will of God that things have not responded in the least to our hopes and endeavors; and now, instead of rejoicing over a new calamity which afflicts some of the Oriental Churches, we must rather grieve and lament.

For what Christ Jesus, the author of faith and consummator, had forewarned long ago, that many would indeed come in His name who would say, "I am Christ," and would deceive many, you are now compelled to suffer and experience in your own time. For the common enemy of the human race and its adversary, having excited, three years ago, a new schism among the Armenians in the city of Constantinople, is entirely intent on subverting

Translated by churchlatin.ai, a product of Boyne Archives

the faith, corrupting the truth, and dividing the unity, by secular wisdom, by heretical discourse, and by the subtlety of cunning deceptions, and even, if possible, by force. Concerning this deceit and treachery, Saint Cyprian said: "He takes men away from the very Church, and while they seem to be approaching the light and escaping the darkness of the world, he infuses them again with darkness, so that, not standing firm in the Gospel of Christ, and in its observance and law, they call themselves Christians, and think that they have the light while walking in darkness, being deceived by the adversary and by falsehood; who, according to the Apostle's words, transforms himself as the angel of light (2 Corinthians, XI, 14), and prepares his ministers as ministers of justice, asserting night for day, destruction for salvation, despair under the pretext of hope, and perfidy under the guise of faith, antichrist under the name of Christ; so that, while they lie with seeming truth, they frustrate the truth with subtlety."

[*Latin ed. p. 246*]

246 Presenting the letter and the dangers, we immediately, in fulfillment of our duty, issued apostolic letters, one on February 24, 1870, which begins "Not without grave concern," and another on May 20 of the same year, which begins "The more grievous the matter has become," so that the authors and adherents of this schism, having disregarded the exhortations, warnings, and censures of the Apostolic See, have dared to choose a pseudo-patriarch for themselves; and we declared, in our letters, the beginning of which is "Whereas the former," issued on March 11, 1871, that this election was entirely null and schismatic, and that the elected, together with his electors, had incurred canonical penalties. Furthermore, the Catholic churches, violently usurped, have forced the legitimate Patriarch, the Most Reverend Father Anthony Peter IX, to leave the boundaries of the Ottoman Empire; the patriarchal seat in Cilicia, which is in Lebanon, has been occupied by military force, and civil authority has been imposed upon it, causing great distress to the Armenian Catholic people, and they are striving in every way to sever them from the communion and obedience of the Apostolic See. Indeed, one of the neo-schismatic priests, John Kupelian, who had previously been publicly and expressly excommunicated by the Most Reverend Nicholas, the Archbishop of Mardin, our Apostolic Delegate in Mesopotamia and other regions, and declared to be separated from the Catholic Church, is working diligently to achieve this, for he had already been inciting disturbances and fomenting schism in the city of Diyarbakir, also known as Amida. For, after receiving the sacrilegious episcopal consecration from the pseudo-patriarch, and having obtained power, he presumptuously attempts and strives to subject the Armenian Catholics, by persuasion and by threats publicly proclaimed, to his domination. If this were ever to happen, the Catholics would return to the most miserable condition they

Translated by churchlatin.ai, a product of Boyne Archives

suffered forty-two years ago, when they were subject to the authority of the old schismatic rites. 4. We have spared no effort, so that, following the example of Our predecessors, whose authority, patronage, and assistance are sought by the most distinguished bishops and fathers of the Eastern Churches in similar times and circumstances...

[*Latin ed. p. 247*]

In Encyclical Letter 247, they have been accustomed to implore that we might remove so many evils from among them. Moreover, for this very reason, we sent our Legate there; and, so that nothing might seem to be lacking, we recently addressed the most excellent Ottoman Emperor with a special letter, requesting that, after justice had been brought to the Catholics of Cattolica, a shepherd exiled from his flock might be restored. But, so that these things might not correspond to our wishes, the designs of those who, while they call themselves Catholics, are enemies of the Cross of Christ, have hindered it.

5. Therefore, it is clear that the matter has come to this, that it is a very serious concern that the authors and accomplices of a new schism might progress to worse things, and that the weaker in faith, or those less cautious, both from among the Armenians and from among other Catholic rites, whom they have set out to deceive, might be led astray into the path of perdition. Therefore, we speak to you again, and, having dispelled the darkness and the many shadows with which we know the truth is surrounded, we are compelled by the very nature of our apostolic office to warn all; so that, indeed, we may strengthen those who stand firm, support those who are falling, and, if they should be willing to hear what we earnestly ask of God, we may restore even those who have most miserably fallen away from the truth and from Catholic unity.

6. The most powerful deceit, employed to conceal a new schism, is the Catholic name which its authors and accomplices presume to usurp, even though condemned by our authority and our judgment. For it has always been the custom of heretics and schismatics to call themselves Catholics, and to say many fine things about themselves, in order to lead both the people and the princes into error. As Saint Jerome the Presbyter testified among others, he said: "Heretics are wont to say to their king, or to 'Pharaoh,' 'We are the sons of the wise, who from the beginning have taught us the Apostolic doctrine; we are the sons of kings anti-quity, who are called the kings of philosophers, and we have the knowledge of the Scriptures joined to secular wisdom.'"

[*Latin ed. p. 248*]

Letter 248, Encyclical 7. In order, however, to prove themselves to be Catholics, the Neoschiastics are provoking them to issue a certain declaration, as they claim, of faith, which they published on February 6th, in

Translated by churchlatin.ai, a product of Boyne Archives

the year 1870, and which they insist must not differ in any way from the Catholic faith. Truly, it has never been permitted to anyone to prove themselves to be Catholic by means of formulated statements of faith, arranged according to their own judgment, in which those things are often omitted which they do not wish to profess; but rather, complete adherence must be given to those things which are proposed by the Church, as ecclesiastical history from all times testifies.

8. Furthermore, the fact that the declaration of faith issued by them was deceitful and insidious is also confirmed by the fact that they rejected the declaration, or profession of faith, proposed by Our authority, according to custom; to which the Most Reverend Father Anthony Joseph, Archbishop of Thyana, Apostolic Delegate in Constantinople, had ordered them to subscribe, in warning letters given to them on September 29th of the same year. Indeed, it is foreign, both to the divine order of the Church and to its perpetual and constant tradition, that anyone can truly prove that they are of the Catholic faith and assert themselves to be Catholic, unless they submit to this Apostolic See. For to this, on account of its greater authority, the entire Church, that is, all who are faithful everywhere, ought to conform; and he who abandons the Chair of Peter, upon which the Church is founded, can only falsely claim to be in the Church; and he is a schismatic and a sinner who places another chair against the singular Chair of Blessed Peter, from which all the rights of the most venerable communion flow.

9. This, indeed, was not unknown to the most illustrious Bishops of the Eastern Churches; and concerning this matter, at the Synod celebrated in Constantinople in the year 536, the Bishop Mennas of that city openly declared, as the Fathers approved. "As your charity knows, we follow and obey the Apostolic See; and..."

[*Latin ed. p. 249*]

Encyclical Letter 249: "We have those who communicate, and those who are condemned by 'it,' and we condemn them." More clearly and explicitly, Saint Maximus the Abbot of Constantinople, a confessor of the faith, speaking about Pyrrhus the Monothelite, declared: "If a heretic does not wish to 'be' or to 'hear,' neither to this one nor to that one should satisfaction be granted; for it is superfluous and unreasonable: because just as one scandalizes all when he scandalizes one against him, so also, when one is satisfied, all are undoubtedly satisfied. Let everyone hasten to satisfy the See of Rome. For when this has been satisfied, everywhere, all will proclaim this to be true and orthodox. For he speaks in vain who thinks that those similar to me should be persuaded and converted; and he does not satisfy, but implores the most holy Roman Church, that is, the blessed Pope, which is the Apostolic See, which from the very Incarnate Word of God, and also from all the holy synods according to the sacred canons and limits, has received and holds the power, authority, and jurisdiction to bind and to

Translated by churchlatin.ai, a product of Boyne Archives

loose, over all, and through all, the holy Churches of God throughout the entire world." Therefore, John, Bishop of Constantinople, which was later confirmed by the entire Eighth Ecumenical Council, solemnly protested that those "separated from communion with the Catholic Church," that is, those who do not consent in all things to the Apostolic See, should not have their names recited among the sacred mysteries: by which he clearly signified that he did not acknowledge them as truly Catholics. All these things are of such great importance that whoever has been judged schismatic by the Roman Pontiff, until he expressly acknowledges and reveres all his power, must completely cease from using the Catholic name. Therefore, since this is of no benefit to the Neoschiastics, who follow the footsteps of recent heretics, they have fled, claiming that it was unjust, and therefore that the judgment of schism and excommunication has no validity in their case.

1. Letter to the illustrious Peter.
2. Collegiate Council, Vol. VI, p. 1520.
3. Libellus of John, Bishop of Constantinople, to Saint Hormisdas.
4. Eighth Ecumenical Council, Act 1.

[*Latin ed. p. 250*]

Letter 250, written in our name by the Most Reverend Archbishop of Thyana, Apostolic Delegate in the city of Constantinople: those who said that they could not, or did not wish to, comply, lest the faithful, defrauded by their ministry, should turn to heretics. These things are new, and entirely unknown and unheard of by the ancient Fathers of the Church. For "the Church knows all things throughout the world," and since the See of the Blessed Apostle Peter is bound by the judgments of all the pontiffs, it has the right to resolve matters, being, indeed, "the one that has the right to judge all things, and to whom it is not lawful for anyone to judge." Therefore, since the heretical Jansiists dared to teach similar things, namely, that they were unjustly excommunicated by the legitimate Prelate, and that they were, nevertheless, fulfilling their own duty, Pope Clement XI, our predecessor of blessed memory, condemned and forbade these propositions in the Constitution *Unigenitus*, which was published against the errors of Quesnel, propositions that were not at all dissimilar to some articles of John Wycliffe, which had long ago been condemned by the Council of Constance and by Martin V. Although, because of human weakness, it can sometimes happen that someone is unjustly rebuked by his Prelate, it is necessary, as our predecessor, Saint Gregory the Great, warned, "that he who is under the hand of the Pastor should fear, whether justly or unjustly, and should not rashly condemn the judgment of his Pastor; lest, even if he is unjustly bound, pride, which is a fault, should arise from this very reprehension." But if it is to be feared by one who is unjustly bound by his Pastor, what shall be said of those who are bound because they are rebellious to their

Translated by churchlatin.ai, a product of Boyne Archives

Pastor and to this Apostolic See, and who have torn and are tearing the seamless garment of Christ, that is, the Church, with a new schism?

Furthermore, the charity with which priests are especially bound to care for the faithful, must be from a pure heart and a good conscience, as the Apostle warned: Saint Gelasius, in his letter to the Bishops of Dardania, letter 26, § 5. Constitution *Unigenitus*, propositions 91, 92, 93. Homily XXVI, on the Gospels, § 6. 1 Timothy, I, 5.

[*Latin ed. p. 251*]

In the Encyclical Letter 251, wherein we must present ourselves as ministers of God, we add, in sincerity of charity, in the word of truth. But Christ Himself, God, who is charity, openly said, concerning those who have not heard the Church, to treat them as both heathens and publicans. Furthermore, our predecessor, Saint Gelasius, responded in a similar manner to Bishop Euphemius of Cattolica: "The flock must follow the pastor who leads it to pastures of salvation, not 'a wandering pastor who leads the flock astray.'" Indeed, "the people must be taught, not followed," and we must remind those who do not know what is permitted and what is not permitted, and not give our consent to their actions.

12. But they, the Neoschiastics, claim that this does not concern dogma, but discipline; however, Our Constitution, which begins with "Reversurus," published on July 12, 1867, pertains to this, and therefore, those who contradict it cannot be denied either the name of Catholics or their prerogatives; and we do not doubt that you will thoroughly understand how futile and empty this evasion is. For those who stubbornly resist legitimate Church prelates, especially the Supreme Pastor of all, and reject their mandates, the Catholic Church has always considered them to be schismatics, even if they have not yet been condemned as such by Apostolic authority. For the Church, as the Fathers have taught, is the people gathered together by priests, and the flock adhering to its pastor; therefore, the Bishop is in the Church, and the Church is in the Bishop; and if one is not with the Bishop, he is not in the Church. Furthermore, as our predecessor, Pope Pius VI, warned in his apostolic letters, which established the civil constitution of the clergy, 2 Corinthians 6:6; 1 John 4:8; Matthew 18:17; Letter 3 to Euphemius, paragraph 15; Saint Celestine to the Bishops of Apulia and Calabria, paragraph 3; Saint Cyprian, letter 66 to Florentius of Pupianum, paragraph 8; March 10, 1791.

[*Latin ed. p. 252*]

Letter 252. The Encyclical condemned the innovations in Gallus, for often discipline is so closely bound to dogma, and so contributes to the preservation of its purity, that the holy councils have not hesitated in many cases to separate those who violate discipline from the communion of the Church by anathema.

Translated by churchlatin.ai, a product of Boyne Archives

13. But the Neoschiastics have gone even further, claiming that "no schism occurs without some heresy being involved, so that it appears that they have rightly withdrawn from the Church." They are not afraid to accuse even the Apostolic See, as if we have overstepped the boundaries of Our authority, presuming to thrust our sickle into another's field, when we issued certain regulations concerning discipline in the Armenian patriarchate; as if the Eastern churches were only obliged to maintain communion and unity in faith with Us, but were not subject to the authority of the Apostolic See of St. Peter in matters pertaining to discipline. Moreover, such teaching is not only heretical after the definition and declaration by the Ecumenical Council of the Vatican concerning the power and reason of the primacy of the Pope, but it has always been and is detested by the Catholic Church. Therefore, the bishops of the Ecumenical Council of Chalcedon clearly professed the supreme authority of the Apostolic See in their acts, and humbly praised the confirmation and firmness of their decrees, even those concerning discipline, by our predecessor, St. Leo.

14. And indeed, "the Successor of St. Peter, by succeeding to the place of St. Peter, has by divine right assigned to himself the entire flock of Christ, so that, together with the Episcopate, he may receive the power of universal governance; while the other bishops must have their own particular portion of the flock assigned to them, not by divine but by ecclesiastical law, not by the mouth of Christ but by hierarchical ordination, so that they may be able to exercise ordinary power of governance over it." If this assignment were denied to St. Peter and his successors, it would change the foundations of the ancient churches, and their prerogatives; "if..."

[*Latin ed. p. 253*]

Encyclical Letter 1 253 "For Christ willed to be, with Peter, principal among others; and He never granted anything to others which He did not deny to him." And indeed, "He adorned the seat of Alexandria," to which He sent the Evangelist, His disciple; "He strengthened the seat of Antioch," in which He sat for seven years, "although He was about to depart." Moreover, those things which were decreed concerning the Constantinopolitan see in the Council of Chalcedon, it was certainly necessary for the Apostolic See to approve and confirm; and this, Anatolius, the Bishop of Constantinople himself, and the Emperor Marcian himself, manifestly confessed.

15. Therefore, unless one entirely departs from the constant and perpetual tradition of the Church, most clearly confirmed by the testimonies of the Fathers, the Neoschiastics, although they may proclaim themselves to be Catholic, will not be able in any way to persuade themselves of this. And unless the subtle deceit of heretical falsehoods were sufficiently known and understood, it could not be understood how the Ottoman government can consider them to be Catholics, whom, according to Our judgment and

Translated by churchlatin.ai, a product of Boyne Archives

authority, We know to be separated from the Catholic Church. For that the Catholic religion may safely and freely exist within the Ottoman dominion, as has been provided for by the decrees of the most excellent Emperor, it is necessary that those things which pertain to the essence of that religion be permitted, such as the primacy of jurisdiction of the Roman Pontiff: and that, according to his judgment, as the universal and supreme Head and Pastor, it be determined who are Catholics and who are not; which is understood to be the case with all human societies, everywhere among all nations.

16. But these Neoschiastics themselves assert that they do not contradict the institutions of the Catholic Church; and that they contend only for the defense of the rights of their churches, and of their nation, and of the rights of the most excellent Emperor, which have been violated by us.

[*Latin ed. p. 254*]

254. They recall that an Encyclical Letter had been issued. Thus, they do not fear to attribute the cause of all present disturbances to Us and to this Apostolic See; just as was done in times past by the schismatic Acacians against our predecessor, St. Gelasius; and previously by the Arians, who also calumniated Liberius, another predecessor of Ours, before Emperor Constantine, because he refused to condemn St. Athanasius, Bishop of Alexandrinum, and because he communed with those heretics. And who can fail to grieve, though not be surprised, at this? For as the same most holy Pope Gelasius wrote to Emperor Anastasius concerning this matter, "This has the characteristic of those who are often sick, who accuse the physicians who, with appropriate observations, seek to restore them to health, rather than consenting to abandon or reject their own harmful desires." Therefore, since these seem to be the principal points by which the Neoschiastics seek to gain favor, and since, although the causes are most deplorable, powerful patrons are sought, it is necessary, in order that the faithful may not be led into error, to proceed more extensively than if we were merely refuting these calumnies.

17. We certainly do not wish to recount here how the condition of the catholic Churches established in the East deteriorated after the schism prevailed, and how, with the vengeance of God, the Greek empire was overthrown, having broken the unity of the Church. Nor do we intend to recount how much Our predecessors labored, as soon as it was possible, to bring back the wandering sheep to the one and true flock of Christ the Lord. Although the fruits of their labors did not correspond in equal measure, yet, with God's mercy, some Churches of different rites have returned to the truth and to catholic unity; which, as a newly born babe received into its arms, the Apostolic See has been most solicitous to strengthen in true catholic faith, and to keep utterly free from every heretical taint.

18. Hence, when it was reported that perverse doctrines of a sect of that

Translated by churchlatin.ai, a product of Boyne Archives

kind had been disseminated in the East, doctrines which had already been condemned by the Apostolic See, 1 2 1 2 St. Gelasius, epistle 12 to Anastasius Augustum, n. 1. St. Athanasius, in hist. Arianor. ad Monach., n. 35.

[*Latin ed. p. 255*]

The Encyclical Letter, number 255, is especially directed towards this end, namely, to undermine the primacy of the pontifical jurisdiction. The Most Holy Pope Pius VII, deeply moved by the gravity and danger of the matter, immediately deemed it necessary to take measures, lest, through vain discussions and disputes, the sound form of words, handed down by the ancients, should gradually disappear from the minds of the Christian faithful. For this reason, he ordered that the ancient formula of Saint Hormisdas, his predecessor, be sent to the Patriarchs and Metropolitans of the East, and he also commanded them, that within their respective jurisdictions, they should order each Bishop, and also the clergy, both secular and regular, who are entrusted with the care of souls, to subscribe to the profession of faith prescribed by Urban VIII for the Easterns, unless they had already done so; and he demanded the same of those who were to be initiated into ecclesiastical orders, or promoted to any sacred office.

However, not long afterwards, namely in the year 1806, a Synod, called the Antiochene Synod, was convened at the monastery of Carcaba, which is located in the diocese of Beirut. This Synod had, in many respects, secretly and fraudulently drawn from the already condemned Pistrian Synod, and it contained several propositions of that Pistrian Synod, which had been partly condemned in their literal meaning, and partly vaguely hinted at, by the Holy Roman See; and other propositions also, which reeked of Baiianism and Jansenism, were detrimental to ecclesiastical authority, disruptive to the state of the Church, and contrary to sound doctrine and the established discipline of the Church. This Carcaba Synod, which was published in Arabic by the Apostolic See without consultation in the year 1810, and which had aroused the complaints of many Bishops, was finally, by the Apostolic Letters of our predecessor, the Most Holy Pope Gregory XVI, disapproved of and condemned; and the Bishops were ordered to draw the rule of their governance and doctrine from other Synods, which had long been approved by the Apostolic See.

Would that the errors, with which that Synod was riddled, had ceased with its condemnation. For, as is clear from Encyclical Letter, Sacred Congregation for the Propagation of the Faith, July 6, 1803; Gregory XVI, Apostolic Letter, "Melchitarum Catholicorum," September 16, 1835.

[*Latin ed. p. 256*]

256. The insidious doctrines have not ceased to spread through the Orient, awaiting a suitable opportunity to manifest themselves openly; a plan which, though attempted in vain some twenty years ago, the Armenian

Translated by churchlatin.ai, a product of Boyne Archives

Neoschiastics have now managed to accomplish. 20. Since the preservation of the faith is a matter of discipline, it was incumbent upon the Apostolic See, by its own right and office, to take action to strengthen it. This most grave duty was never lacking, although, due to the circumstances of the times and places, it was only possible to address urgent necessities, awaiting more favorable times, which, by the mercy of God, eventually arrived. Indeed, under the urging of Our predecessors, Leo XII and Pius VIII, and with the support of the highest princes of Austria and of France, the most exalted Ottoman Emperor, recognizing the distinction between Catholics and heretics, subjected the former to his civil authority; and he decreed that they should have, according to the custom of the region, their own civil head, or prefect. At that time, for the first time, Armenian bishops of the ordinary rite were able to be safely established in Constantinople with full authority; the Catholic churches of that rite were able to flourish, and the Catholic worship was able to be publicly professed and practiced; therefore, Our predecessor, the blessed and revered Pius VIII, established the Armenian primatial and archiepiscopal see in Constantinople, deeply concerned that canonical discipline might properly and opportunely flourish there. 1 21. After some years, when it seemed opportune, episcopal sees subject to the primatial see of Constantinople were established by Us, and a method was defined to be followed in the election of bishops. Then, to prevent the civil authority, as they say, of the Prefect from being carried into sacred matters, which is entirely contrary to the laws of the Catholic Church, it was decreed by the highest authority of the Ottoman Empire; a decree given to the Venerable Father Anthony Hassun, then the Primate of that see, by an imperial diploma on April 7, 1857. Furthermore, at the request of the Armenians themselves, the Constantinople primatial Church was, 2 1 2 by the Apostolic letter *Quod iamdiu*, on July 6, 1830. By the Apostolic letter *Universi Dominici gregis*, on April 30, 1850.

[*Latin ed. p. 257*]

The Encyclical Letter, having been revoked, we have, by apostolic letters, the beginning of which is "Reversurus," united to the patriarchal seat of Cilicia; and it seemed fitting and necessary that certain principal points of discipline should be established by the authority of this Constitution; and a patriarchal synod was requested, which, by apostolic letters, the beginning of which is "Commissum," published on July 12, 1867, we ordered to be held for the first time, with diligence and care, so that a proper order of discipline might be established throughout the Armenian Patriarchate.

22. But a certain enemy, having sought to sow tares in the Church of Armenia in Constantinople, shortly thereafter raised a question concerning the civil administration of the Armenian community, which he claimed had been unjustly taken over by the new Patriarch. This controversy was soon followed by a serious disturbance; and the same Patriarch was ac-

Translated by churchlatin.ai, a product of Boyne Archives

cused of betraying national rights, because he had accepted our aforementioned Constitution, as a Catholic Bishop ought to do; and thus, all the dissenting factions conspired against the Constitution itself, with their plans, machinations, and slanders.

23. In this matter, two things in particular were brought up as grounds for accusation, namely, those things which had been decreed concerning the election of sacred officials and the administration of ecclesiastical goods; for it was falsely asserted that these things were contrary to the rights of the people, and even calumniously against the rights of the most high Emperor. Although these things should be well known, it is helpful to repeat them here, because there have always been, and are, many who speak in vain, driven by the ignorance that is in them, while others, like gnats and conjecturers, imagine what they do not know.

24. We decreed that a Patriarch should be elected by a synod of Bishops, excluding laymen from the election, and also any clerics who do not possess the episcopal character; and we forbade that the elected one should enter into the exercise of his power, unless... (Ephesians 4:17, 18; Proverbs 23:7; Acts, volume VII, page LXXVII, 17).

[*Latin ed. p. 258*]

Letter 258, Encyclical: They say that [a bishop] is to be enthroned only after having received, beforehand, the confirmation of his appointment by letters from the Apostolic See. We have ordered that bishops be chosen in such a way that all the bishops of the province, assembled in a synod, propose to the Apostolic See three suitable ecclesiastical men. If, however, it is impossible for all the bishops to attend the synod, the proposal shall be made by at least three diocesan bishops, assembled in a synod with the Patriarch, while those who are absent shall signify, in writing, the aforementioned threefold proposal. Once this has been done, the Roman Pontiff will choose one of those proposed, whom he will appoint to the vacant Church. We have decreed that We should not doubt that the bishops will strive to propose truly worthy and suitable men, so that We may never be forced, either by Ourselves or by Our successors, for the sake of the office of the apostolic ministry, to choose someone else who has not been proposed, and to preside over the vacant Church. 25. These things, if they are carried out with a spirit free from the intrigues of factions, will be found to have been established in accordance with the faith of the Catholic Church. Regarding the exclusion of laymen from electing sacred prelates, it must be carefully distinguished that the right of electing bishops is different from the faculty of giving testimony concerning the life and morals of those who are being considered for the episcopate. The former would pertain to the false opinions of Luther and Calvin, who also asserted that it was a divine right for bishops to be chosen by the people: and this false doctrine has been and is rejected by the Catholic Church, for no power, whether divine or

Translated by churchlatin.ai, a product of Boyne Archives

ecclesiastical, has ever been granted to the people to elect bishops or other sacred ministers. 26. Concerning the testimony of the people regarding the life and morals of those who are being considered for the episcopate, "after the Catholic prelates had begun to be driven from their sees by the violence of the Arians, whom Constantius, the emperor, favored, and their adherents were introduced into those sees, as St. Athanasius laments (Huic. Ar. ad Monach., n. f.), the necessities of the times compelled..."

[*Latin ed. p. 259*]

Encyclical Letter 259: "that the people should be present at the elections of Bishops, so that they might be incited to defend the Bishop in his see, whom they knew had been elected before them." Indeed, this custom prevailed in the Church for some time; but, since continuous discord, tumults, and other abuses arose, it seemed fitting to remove the people from the elections, and for their testimony and desire to pass by the person being chosen. As St. Jerome observes, "sometimes the judgment of the people and the common crowd errs, and in 'confirming priests, each one favors his own morals, ' so that they seek not so much a good man, as one similar to themselves' as a leader." 27. Nevertheless, We have left to the Episcopal synod itself the free faculty of establishing the method of election, to investigate the qualities of those to be chosen in whatever way they deem most suitable, and even, if they so order, to seek the testimony of the people. In truth, it is evident from letters sent to this Holy See that, when dealing with the election of a Bishop for the regions of Sebastena and Tokat degli Armeni three years ago, the Armenian prelates had sought the testimony of the people. We do not, nor do we consider it fitting, that this should be done in the election of a Patriarch, firstly because of the eminent dignity of the office, secondly because he is placed above all the Bishops of his region, and thirdly, because, as appears from documents sent to this Apostolic See, the elections of each Patriarch of the Oriental rites have been carried out solely by the Bishops; unless, perhaps, particular and extraordinary circumstances have demanded otherwise; that is to say, so that Catholics might defend themselves from the schismatics who subjected them, and, by seeking another Patriarch, might, by this very act of withdrawing from those same schismatics, confirm their true and sincere conversion to the Catholic faith; as was the case in the election of Abraham Peter I. 28. What We have asserted as the right and power of this Apostolic See to propose three candidates for the election of a Bishop is contained in book 1, against Jovinian, chapter 34.

[*Latin ed. p. 260*]

Letter 260. Encyclical. Furthermore, we forbade the elected Patriarch from being enthroned unless he had previously been confirmed by the Roman Pontiff; this is what some find more difficult to bear, and they

Translated by churchlatin.ai, a product of Boyne Archives

lament it. They object to our customs and canons, as if we had departed from the guardianship of the sacred canons. To these, it could be replied, as our predecessor, St. Gelasius, said, who suffered a similar calumny from the schismatic Acacians: "They oppose 'canons' to us," he said, "while they do not know what they are saying; but in doing so, they betray themselves, because they flee to the sound and correct guidance of the first See." For these are the canons that acknowledge the divine authority of Peter in the entire Church; and they proclaim that he, as was said in the Council of Ephesus, lives and exercises judgment even to this day and always, in his successors. Therefore, Bishop Stephen of Larissa could confidently respond to those who believed that the intervention of the Roman Pontiff diminished the privileges of the Churches of the royal city of Constantinople: "The authority of the Apostolic See, which was given by God and our Savior to the supreme Apostle, precedes all the privileges of the holy churches, in whose confession all the churches of the world find rest."

29. Indeed, if you recall the history of your regions, examples will occur to you of Roman Pontiffs using this power, when they considered its exercise necessary for the safety of the Eastern churches. Therefore, Pope Agapetus, by his authority, deposed Anthimus from the See of Constantinople and appointed Menna without any synod. And our predecessor, Martin I, entrusted his vicariate in the Eastern parts to John, the Bishop of Philadelphia, and, he himself said, by the apostolic authority that was given to him.

[*Latin ed. p. 261*]

The Encyclical Letter 261, given to us by the Lord through the most holy Peter, the prince of the Apostles, commanded the aforementioned Bishop to establish, throughout all the cities subject to the Sees of Jerusalem and Antioch, Bishops, priests, and deacons. And if we were to proceed to more recent times, you know the Armenian Bishop of Mardin, elected and consecrated by the authority of this Apostolic See; to whom our predecessors, the Patriarchs, granted the care of Cilicia, and the administration of the region of Mesopotamia being assigned to them according to the will of the Holy See. And all of these things are entirely consonant with the supreme power of the Roman See; which the Armenian Church, if the sorrowful times of schism are excepted, has always acknowledged, proclaimed, and revered. And it is not surprising, since even among those among you who are still alienated from the Catholic faith, the ancient tradition remains firm and flourishes; that great Bishop and Martyr, whom your people rightly glorify as the Illuminator, whom Chrysostom called the rising sun in the Eastern regions, whose rays of splendor extend even to the Greek nation, received his authority from the Apostolic See; to which, without hesitation, he dared to approach, despite the long and difficult journey.

Translated by churchlatin.ai, a product of Boyne Archives

30. But the causes, which are most serious, God is my witness, and which We have carefully considered, both in the past and recently, compelled Us to arrive at this very arrangement, not through the suggestion of anyone, but through Our own initiative and from certain knowledge. For everyone easily understands that the eternal, and sometimes temporal, happiness of the people depends on the proper election of Bishops; and, considering the circumstances of places and times, this matter should have been handled in such a way that the authority of those instituted to the sacred office, from which it originates, should be entirely restored to the Apostolic See. However, the exercise of this power was deemed to be tempered in such a way that the power of the Patriarch to elect Bishops remained with the Synod.

[*Latin ed. p. 262*]

262 It was incumbent upon the aforementioned Encyclical to propose to Us three suitable men for the vacant sees, as was stipulated in Our aforementioned Constitution. 31. Furthermore, in order that, in matters concerning appointments, an additional incentive might be provided to those who are well-qualified, We decreed that We would only accept the proposal of truly suitable men, worthy of such an office, so that they would never be compelled to appoint someone else to a vacant see, even if that person were not proposed; and this had also been carefully provided for in the method established by Us in the year 1853, with the very same intention. We have received, and from these words, some have apparently seized the opportunity to suspect, lest the proposal of Bishops, made to Us, be illusory and of no importance; while others have seemingly devised a more elaborate scheme, concealing within these words the intention of entrusting the care of the Armenians to Latin Bishops. Indeed, no such accusations deserve a response, for they are only permissible to those who have been misguided in their thoughts and have been frightened by a fear that was not present. We deemed it necessary to mention Our right to choose, even outside of the threefold proposal, lest anyone should ever lead the Apostolic See to exercise that right. This right and duty, even if We were silent, would have remained intact with the Chair of Peter: for those rights and privileges which have been granted to it by Christ Himself can indeed be claimed, but cannot be taken away; nor is it within the power of any man to renounce a divine right which, at one time, might be exercised by the Apostolic See. 32. Moreover, although these decrees have been issued to the Armenians nineteen years ago, and actions concerning the election of Bishops have been taken on several occasions, it has never yet happened that We have used this power, not even at a more recent time, after the publication of the Constitution *Reversurus*, when We received a certain threefold proposal from which We were unable to choose a Bishop. Therefore, let the Synod

Translated by churchlatin.ai, a product of Boyne Archives

of Bishops proceed according to the laws prescribed by Us.

[*Latin ed. p. 263*]

We have decreed 263 vacancies, so that we might choose another, not previously designated; but this has not yet been accomplished, because a new schism has begun to tear apart the Armenian Church, which has thus far been an impediment. However, we trust that the times will never become so calamitous for the Armenian Catholic Churches that the Roman Pontiffs will be compelled to appoint men to them who have not been approved by the Episcopal Synod.

33. It is fitting to add a few words concerning the prohibition of the enthronization of Patriarchs before the confirmation of this Holy See. The election of Patriarchs has never been considered firm and valid without the consent and confirmation of the Roman Pontiff; the monuments of antiquity testify to this; and it is well known that the confirmation from those elected to the patriarchal sees has been sought, even by emperors themselves. Thus, to omit others in a well-known case, Anatolius, the Bishop of Constantinople, a man certainly not well-regarded by the Apostolic See; and even he, and Photius, the first author of the Greek schism, demanded the consent of the Roman Pontiff to confirm his elections, and also used the intervention of the emperors Theodosius, Michael, and Basil. Moreover, the Fathers of Chalcedon wished the greatest of the Antiochian bishops to remain in his see, even though the acts of the synod of Ephesus, in which he had been condemned, declared all those acts null and void, because "it would seem that he had rightly approved the merit of that holy and blessed Pope, who confirmed the episcopate of the venerable Bishop of the Antiochian Church."

34. And if we speak of the Patriarchs of those churches which, in recent times, have returned from schism to Catholic unity, you will not find anyone among them who has not sought the confirmation of the Roman Pontiff; and all of them have been confirmed by the same Roman Pontiffs, with letters given, so that they might be instituted as leaders of their respective churches. It has indeed happened that, due to the distance of the regions, the Apostolic See, tolerating the situation, has... [The text is incomplete here.]

[*Latin ed. p. 264*]

Letter 264: Concerning the dangers and difficulties, and the frequent damages arising from the arrogance of schismatics of the same rite. Elected Patriarchs, before receiving the confirmation of the Supreme Pontiff, possessed authority; and this was also granted in the West, due to the necessities of the Churches and the dispensative advantages for those who were very remote. However, it is necessary to observe that these circumstances have ceased, with the removal of the difficulties of travel, and with the

Translated by churchlatin.ai, a product of Boyne Archives

loss of the Catholic benefits previously granted by the supreme Ottoman Emperor from the civil power of the schismatics. Surely, no one can deny that it is safer to provide for the preservation of the Catholic faith, than to allow anyone to disturb it arbitrarily before receiving Apostolic confirmation, who would be so unworthy of such an office in the patriarchal seat; or, indeed, to prevent the occasions for disturbances that might arise, if at any time an elected Patriarch were rejected by the Holy See and should be obliged to relinquish his position.

35. Indeed, if one examines the matter carefully, it will become apparent that everything established in Our Constitution is designed to promote the preservation and growth of the Catholic faith, and also to defend the true freedom and authority of the Bishops; whose rights and privileges, which are strengthened by the firmness of the Apostolic See, have always been vigorously defended by the Roman Pontiffs, at the request of Bishops of every rank, nation, or rite, against heretics or the ambitious.

36. As for national rights, we need not address them in detail, since we are speaking of ecclesiastical matters. If we are speaking only of civil matters, these are within the power of the supreme Prince; who is rightly empowered to judge and decide concerning them, as he deems it expedient for the benefit of his subjects. But if we are speaking of ecclesiastical matters, no one can fail to understand that national or popular rights have never interfered with the Church and its hierarchy and ordinances. Although all nations and peoples have flowed into the Church from every direction, they have nevertheless always been united in the unity of their faith.

[*Latin ed. p. 265*]

In the Encyclical Letter 265, God has united all things under Christ, the supreme Pastor, the Prince of the Apostles, B. Peter, so that it may no longer be, as the Apostle warned, that some are Gentiles and others Jews, some barbarians and others Scythians, some slaves and others freemen, but that Christ may be all in all: from which all the body, being compact and connected through every joint of supply, according to the measure of each member, makes the growth of the body for the edification of itself in charity. For the Lord has not only not given any power to the Gentiles or nations in the Church, but He has entrusted them to the Apostles, with the command to teach them, and therefore, the Most Blessed Peter, in accordance with the Apostles and elders, openly declared that God had chosen the Gentiles to hear the word of the Gospel and to believe.

But it is also said that the rights of the supreme Emperor have been violated by Us. This is a common and long-standing calumny, worn down by the use of heretics; which was first devised by the Jews against Christ God, and which the Gentiles used among the Roman emperors, and soon the heretics used it among even Catholic princes, and would that they did not use it even now. Wherefore, St. Jerome wrote, "To flatter heretics with

Translated by churchlatin.ai, a product of Boyne Archives

royal grandeur, and to have this custom, that they attribute their pride to kings, and that it should seem that what they do, the king has done: to accuse holy men and preachers of the faith before him, and to order doctors not to preach in Israel, lest they act against the will of the king, because Bethel, that is, the house of God, and the false church, is the sanctification of the king and the house of the kingdom." Indeed, it would be better to refute these most impudent calumnies with contempt and silence, since they are so foreign to the doctrines of the Catholic faith, to Our morals, and to Our institutions. But it is most useful for the simple and inexperienced to take care lest they be harmed by evil and deceit concerning Us.

[*Latin ed. p. 266*]

Letter 266, Encyclical, and concerning the Apostolic See, considering that, due to the calumnies of the wicked, they attempt "to aid their own vices by oppressing others." 38. Therefore, the doctrine of the Catholic Church, received from Christ Himself, and transmitted by the holy Apostles, teaches that to Caesar what is Caesar's, but to God what is God's; therefore, Our predecessors have never failed, when it was necessary, to impress upon rulers the due faith and obedience. This is so that the administration of civil affairs may be the Emperor's, while ecclesiastical matters pertain entirely to the priests. In these matters, all things are to be enacted which are necessary for establishing and maintaining the external discipline of the Church; for it would be heretical to assert, as has already been defined by the most Reverend Pope Pius VI, My Predecessor, that the use of this power, received from God, is an abuse of the authority of the Church. In order that this distinction of powers may be maintained in perfect integrity, the Apostolic See has always striven diligently; and the interference of secular rulers in ecclesiastical matters, which Saint Athanasius called a new and Arian heresy, has been openly disapproved by the most holy prelates; among whom it suffices to remember Basil of Caesarea, Gregory the Theologian, John Chrysostom, and John Damascene. The last of these openly affirmed: "No one will persuade me that the Church is governed by the edicts of the Emperor; but by the decrees of the Fathers, whether they are written or not." Therefore, the Fathers of the ecumenical Council of Chalcedon openly proclaimed in the case of the Bishop Photius of Tyre, with the consent of the imperial officials present, "against the rules, nothing pragmatic [that is, an imperial decree] will be valid; let the canons of the Fathers prevail." And when those same officials inquired... 1 2 3 4 5 1 Greg. Nazianz. orat. 43, in laud. S. Basil, n. 68. Const. Auctorem fidei propos. 4. 3 Hist. Arianor. ad Monach, n. 52. 4 Orat. 2, de sacr. imaginib. n. 16. 5 Concil. Chalced. Action. IV. 2

[*Latin ed. p. 267*]

Encyclical Letter 267: "Does this Holy Synod wish to decide on all prac-

Translated by churchlatin.ai, a product of Boyne Archives

tical matters that have been enacted to the detriment of the canons?" The Bishops all responded: "All practical matters shall cease; the canons shall be observed, and this shall be done by you." 39. There are two matters in which it is said that Our imperial rights are violated, namely, that We have defined the manner to be observed in the election and institution of sacred ministers, and that We have forbidden the Patriarch from alienating ecclesiastical goods without the consultation of the Apostolic See. 40. Indeed, what could be more pertinent to the order of ecclesiastical affairs than the elections of Bishops? We do not read anywhere in the sacred Scriptures that these elections are permitted to the judgment of princes or the people, whereas the Fathers of the Church, the ecumenical Councils, and the apostolic constitutions have always recognized and affirmed that they pertain to ecclesiastical authority. Therefore, if the Apostolic See defines the manner to be observed in carrying out these elections, how can it be said that it has violated the rights of the supreme Emperor, when it is not exercising alien, but its own, rights? The authority of a Bishop over the people entrusted to him is indeed great and venerable; nevertheless, there is nothing for civil authority to fear from this, since in the Bishop, it will have not an enemy, but a defender of the legitimate rights of the same Prince. And if, through human weakness, something different were to occur, the Apostolic See would not fail to admonish such a Bishop who does not truly descend in faith and obedience to the legitimate Prince. Nor would We fail to take care that no one with an unfriendly disposition towards the legitimate Prince might attain to the episcopal dignity; for, according to the laws of the Church, many inquiries are usually made about those who are being considered for such promotion, so that they may be recognized as endowed with the virtues that the Apostle requires in them. These things, indeed, would not be possible for those who are found to be disobedient to the precept of Blessed Peter, the Prince of the Apostles: "Be subject to every human creature for the Lord's sake" (1 Peter 2:13).

[*Latin ed. p. 268*]

268. "The Encyclical 'Deum': or, to praise those who rule, whether as excellent rulers, or as leaders 'sent by Him for the punishment of evildoers'; and to praise the good; for it is God's will that those who do good should be known even by the ignorant." (1 Peter 2:12). "As free, and not as those who are held in bondage; but as servants of God." (2 Peter 2:16). 41. If, as was deemed useful by the first Ottoman ruler in the city of Constantinopolitana, and by his successors, it is also pleasing to grant civil office and administration to Bishops and other members of the clergy, it does not therefore follow that the full and integral power of the Church in their election can be diminished. For it would be absurd if heavenly things were to be subordinated to earthly things, and spiritual things to civil things. Moreover, it would always be proper for the supreme ruler to grant civil status and power to

Translated by churchlatin.ai, a product of Boyne Archives

the other, if at any time it should seem expedient, provided that Catholic Bishops always retain the free exercise of their ecclesiastical power. But that this has happened, and indeed has been confirmed by a special diploma of the Most Excellent Ottoman Emperor in the year 1857, is sufficiently clear. 42. All of these things, having already been openly signified in Our name and by Our mandate to the Ottoman Court by the Most Reverend Archbishop of Thessalonicensi, while he was serving as Our Extraordinary Envoy in Constantinopolitana, it is entirely necessary to cease from repeating these calumnious and obsolete statements, unless those who are hostile to us wish to be considered more devoted to factions than to truth. 43. We were greatly astonished when we heard that, concerning the new law established and confirmed by Us regarding the alienation of ecclesiastical goods, it was claimed, as if We were not only infringing upon imperial rights, but also seeking to claim the goods of the Armenian Churches for Ourselves. Ecclesiastical goods belong to the Church just as certainly as the goods of citizens belong to citizens, and their administration is under the authority of the Church, not merely because the canons have decreed it, but because natural reason itself suggests it to everyone. In the early centuries of the Church, the administration of these goods...

[*Latin ed. p. 269*]

The Encyclical Letter, considering the judgment and conscience of 269 bishops, did not overlook the decrees of subsequent Councils, and established laws by which it was defined how and for what reasons the administration should be conducted, and alienation should be permitted; in this matter, the ancient power of the bishops was circumscribed, and permitted by the prudent judgment of Synods, or sometimes of more senior prelates. However, since it did not seem sufficient to ensure the integrity of ecclesiastical goods, either due to the infrequent celebration of Synods, or for other reasons, the authority of the Apostolic See had to intervene; it was decreed that ecclesiastical goods should not be alienated without the knowledge of the Roman Pontiff.

4.4. This was considered so important and necessary for their benefit that, from that time forward, those elected to cathedral, metropolitan, or even patriarchal churches were required to bind themselves to observe this law, under a solemn oath. And the acts testify that this oath has been taken by Patriarchs of the Eastern rite, concerning the goods of their table, from the time that their Churches returned to Catholic truth and unity; and none of them has failed to promise to observe the aforementioned law. The same is done and is done daily by bishops of the Latin rite, of any nation, kingdom, or republic, and the civil authorities have never contested this, so that their rights would be violated. And rightly so: for in these matters, the Roman Pontiff presumes nothing, arrogates nothing to himself; but he is entirely concerned with the benefit of the churches, and in each case, he

Translated by churchlatin.ai, a product of Boyne Archives

determines what is expedient for the bishop to do, after receiving counsel, or he empowers the bishop himself to make the determination; in a manner not dissimilar to how a father of a family would act with his children.

Now, since the Patriarchs are already subject to the law by which they are forbidden to alienate the goods of their table without the knowledge of the Apostolic See, we have considered it necessary to decree in Our Constitution concerning other ecclesiastical goods, and this has not been done without very serious reasons, of which we know best that we must render account to God.

[*Latin ed. p. 270*]

270. An encyclical letter may wish to judge, but it suffices to know that everyone of sound mind will understand that it is safer and more effective for the well-being of the Churches, and for the preservation of ecclesiastical goods, that no prejudice be brought to the legitimate rights of anyone through Our aforementioned Constitution.

45. How, indeed, Our decrees could have harmed the rights of the Most High Emperor, as they claim, We frankly confess that We do not understand; far from it, for We neither intended this, nor did We believe it possible. For it cannot be said that those same rights are violated by that power with which the Patriarchs and Bishops possess within the Ottoman Empire concerning the administration of ecclesiastical goods, nor is it to be said that those same rights are violated by that which the Apostolic See extracts for its due and its right, when it establishes a limit, even with its own authority intervening, by which sacred ministers must use these things, so that it may be for edification, and not for destruction. Thus, it is clear that We have provided for the safety of these very goods, and that it will be a most useful thing for the Catholic Churches established in the East; which, when controversies have subsided, all will recognize; and posterity, if these laws are religiously observed, will undoubtedly experience. Now, when the Most High Emperor has asserted the freedom of these things through his decrees, and has kindly signified to Us that he intends to protect them, We do not doubt that, considering the true state of affairs, and setting aside the false accusations of detractors, he should rather rejoice than grieve over those things which are intended for their evident benefit.

46. No less scandalous is that comment devised by some recent writers, and eagerly embraced by those Easterns who are opposed to Rome, who have not hesitated to accuse the Roman Pontiff, in his capacity as Vicar of Christ, of being a certain external authority that intrudes itself into the internal governance of kingdoms and nations: which, they say, must be forbidden so that the Most High Emperor may retain his rights, and so that no path may be opened for other princes to attempt similar things.

Translated by churchlatin.ai, a product of Boyne Archives

47. Truly, how false these things are, how far they are from the truth...

[*Latin ed. p. 271*]

It is easily understood why this encyclical letter deviates from the divine order of the Catholic Church. For it is primarily false that the Roman Pontiffs have exceeded the limits of their power, or that they have interfered in the civil administration of kingdoms, and have usurped the rights of princes. And if the Roman Pontiffs are accused of this, because they decide on matters concerning the election of bishops, or the affairs of the Church and its ministers, or on other matters pertaining to ecclesiastical discipline, even those which are called external, then either this accusation must be accepted, or it must be understood, or it must be corrected, that the divine and therefore immutable order of the Catholic Church is being undermined. This order has always remained and will remain stable: and it cannot, in any way, be subjected to changes, especially in those places where the freedom and security of the Catholic religion have been asserted by the decrees of the emperors themselves, the highest of princes. For it is a dogma of the Catholic faith that there is one Church, and that the Roman Pontiff is the head of that Church, and the father and teacher of all Christians. Therefore, he certainly cannot be called a stranger to any of the Christians, or to any of the particular Churches of Christians, unless someone were to contend that the head is a stranger to its members, the father to his children, the teacher to his disciples, the shepherd to the flock.

48. Moreover, because they do not hesitate to appeal to an external authority, they divide the unity of the Church by speaking in this way, or they provide an opportunity for its division, because they deny to the successor of Peter both his title and his rights as the universal Pastor. Therefore, they are either lacking in the due faith of the Catholic Church, if they themselves consent to this, and they obtain the due freedom for themselves, if they are outside. For Christ the Lord openly taught, and it is known that the sheep must hear the voice of the shepherd, and follow him; but they must flee from the stranger, because they do not know the voice of strangers. If, therefore, the Supreme Pontiff is called a stranger, that is, *alienus* to a particular Church, then the Apostolic See itself, that is, the Catholic Church, is also *aliena*; which is one and only, founded on the words of the Lord, "upon Peter." (1 John X. 5)

[*Latin ed. p. 272*]

Letter 272. By this encyclical, We declare that those who separate themselves from it no longer maintain the divine and Catholic Church, but rather attempt to establish a human church; which, as they claim, is bound only by human ties of nationality, and is neither firmly attached to the chair of the blessed Apostle Peter, nor is it strengthened by its solidity, nor is it joined to and united with the Catholic Church in its entirety.

Translated by churchlatin.ai, a product of Boyne Archives

49. These things, Venerable Brothers and beloved Sons, We have considered necessary to write to you in this present state of affairs, since you have shared with Us in the faith in the justice of God and Our Savior Jesus Christ, so that We might stir up your sincere minds in vigilance. For you see that even among you, what the holy Apostles of God foretold is being fulfilled, namely, that in the last days deceivers will come, walking according to their own desires. Therefore, strive not to be transferred from Him who called you in the grace of Christ to another Gospel; which is not another, unless there are some who trouble you and wish to pervert the Gospel of Christ. For indeed, those who wish to pervert the Gospel of Christ are those who attempt to undermine the foundation which the same Christ established for His Church; and who deny or empty the universal care for feeding the sheep and lambs, which was entrusted to blessed Peter in the Gospel.

Indeed, "the Lord permits these things to happen," and allows them, *while maintaining the proper freedom of choice*, "so that while your hearts and minds examine the distinction between truth, the faith of the elect may shine forth with a clear light." However, you must avoid those who are daily progressing towards evil, according to the precept of the Apostle; and you must not admit to your communion anyone who communicates with such people, as you have hitherto done so excellently and consistently, so that you may preserve the Catholic faith in your hearts undefiled.

50. "But let no one deceive you," as happened with the ancient schismatics, who say not of religion.

[*Latin ed. p. 273*]

Encyclical Letter 273: "The struggle is not about matters of doctrine, but about morals, or about the Apostolic See not treating of the cause of Catholic communion and faith, but about suffering an injury, and wondering why it seems to have been scorned by them; for these and similar things, as far as they deceive the simple, those who are placed in error do not cease to spread. Indeed, it is now clear from their declarations, and also from writings published for the public, that they openly attack the primacy of jurisdiction granted by Christ the Lord to the most blessed Peter, and therefore to this Apostolic See, while seeking to obtain the right to exercise this authority in the Eastern Churches: and this error, which causes such disturbance or appears to be a pretext to inexperienced minds, could not, nor can, be the cause of our aforementioned Constitution. But the Apostolic See does not grieve so much about the insult, but defends the faith, and, so that all those who today have shown contempt for it may, if they return to the integrity of the Catholic faith and communion – truly and sincerely repenting – be received with all the affection of the heart, according to the path of the fathers. And that the most merciful God may deign to grant this, and that We, in the humility of Our hearts, have long

Translated by churchlatin.ai, a product of Boyne Archives

earnestly implored, and that you also may do the same, We desire and will.

51. Furthermore, Venerable Brothers and beloved Sons, be strengthened in the Lord and in the power of His might: take up the armor of God, that you may be able to stand against all the wiles of the devil; and do not make your souls more precious than yourselves. Remember your ancestors, who, in order to preserve the most excellent gift of the true and Catholic faith for themselves and for you, did not fear exile, imprisonment, and even death itself; for they knew well that those who kill the body are to be feared, but He who can destroy both soul and body in hell. Therefore, cast all your cares upon God; for He cares for you, and He will not allow you to be tempted above that which you are able to bear, but will make with the temptation a way of escape, that you may be able to endure it. In 11 S. Gelasius, loc. cit. Acts, vol. VII, page LXXVII. 18"

[*Latin ed. p. 274*]

274. Encyclical Letter: "Rejoice briefly now, if it is necessary for you to be sorrowful in various trials, that the proof of your faith, being much more precious than gold, which perishes, though tested by fire, may be found to the praise, glory, and honor at the revelation of Jesus Christ." We earnestly beseech you, in the name of the same God and our Savior, that all of you may say and do the same, and be made perfect in the same mind and in the same judgment, being careful to preserve the unity of the faith in the bond of peace. And the peace of God, which surpasses all understanding, guard your hearts and your thoughts in Christ Jesus, our Lord: in whose name and authority, We impart to you, Venerable Brothers and beloved sons, who persevere in communion and obedience to the Apostolic See, Our Apostolic Benediction. Given in Rome, at St. Peter's, on the sixth day of January, in the year 1873, in the twenty-seventh year of Our Pontificate. PIUS PP. IX. RESTITUTIONIS IN INTEGRUM ET NULLITATIS » PROFESSIONIS. May 3, 1872. Summary of the case. In the monastery of nuns in Sicily, which was fully subject to the jurisdiction of the Bishop, a girl named Maria, aged five or seven years, was placed for the purpose of education. In the same monastery, there were three nuns who were related by blood to the same girl, that is, an aunt and two grandmothers. When Maria reached the age at which she could begin her novitiate, according to the regulations of the monastery, she returned to her father's house for six months; then, in 1858, she entered the novitiate as a choir sister; on August 30, 1859, she renounced all rights with the consent of her father, and on the following day she took her solemn vows.

[*Latin ed. p. 275*]

Restitution! to the integral state and the nullity of the Profession. 275 For more than seven years, in the month of September 1866, those nuns were all

Translated by churchlatin.ai, a product of Boyne Archives

expelled from the monastery by force, under the authority of the subalpine Government, and from the beginning, they were also forbidden from wearing the monastic habit. Mary, returning to her parents' home and putting on secular clothing, did not cease. From then on, she supplicated the Holy See to obtain the restitution to the integral state, and a declaration of the nullity of the profession. After the customary requests were made to the Ordinary (Vicar Capitular) for information and a vote, and after a response was received, and this was reported to the Most Holy Father, a rescript was issued with the following wording: "From the audience of His Holiness, on the 8th of July 1870. His Holiness, having heard the report of the Ordinary of the diocese of N, granted him the necessary and appropriate faculties to carry out the process concerning the causes of restitution to the integral state and the nullity of the profession, observing in substance the norms of the aforementioned Constitution of St. Pius V, and with the power, if necessary, to delegate, with regard to absent witnesses, to the Diocesan Ordinaries, in which perhaps those witnesses may reside. Furthermore, the same Holiness ordered that the process be sent to this Holy Congregation, to which He granted permission, notwithstanding the lapse of the canonical term, to propose and decide, in a plenary session, the cause concerning both the restitution to the integral state, as well as concerning the nullity of the profession. Contrary to anything else, etc." 1. In the Apostolic Letters in the form of a Brief given for Sicily on the 28th of January 1864, which you have in vol. III, page 186, the method is prescribed by which causes pertaining to the ecclesiastical forum, after the abolition of the delegated judge and his tribunal, can and must be judged. In Article XIII, the method of judging causes concerning restitution to the integral state is established, due to the lapse of five years from the Synod of Trent, and it is prescribed that, after the information has been obtained, if it is determined by the Holy See that the just arguments of the Regular pleading for the restitution are well-founded, the Roman Pontiff will designate one or more Bishops of the same island of Sicily, who will issue a judgment without appeal concerning whether the restitution to the integral state should be granted or denied, so that the cause may then be debated concerning the nullity or validity of the profession, as is further stated therein. But in the present case, due to the particular circumstances of the vicissitudes, the Most Holy Father has decided otherwise, as is evident from the aforementioned Rescript.

[*Latin ed. p. 276*]

276 After having considered the decree regarding the restoration to integrity and the nullity of such a profession, the Capitular Vicar appointed a Defender of the profession, who took an oath and confirmed the interrogatories: "My advocate had already presented her case to the Chapter long ago." Furthermore, he delegated a Vicarious Forane, who was present in the place where Mary was born, to summon and examine witnesses

Translated by churchlatin.ai, a product of Boyne Archives

there, along with another Defender of the profession appointed in that place: The witnesses were brought in, subjected to examination, and all of them took an oath administered by the Vicarious Forane, and furthermore, they confirmed their testimonies with their own signatures, along with the signature of the Defender. Subsequently, the proceedings were sent to Rome, and, according to established procedure, were delivered to the Consultors, so that they might write their opinion on the matter. Then, in accordance with custom, both the opinion and the proceedings were sent to the Defender of the profession appointed in Rome, so that he might make his observations. With all of these things prepared, the case was presented before the Holy Congregation, so that it might be judged. A concise summary of the arguments. THE OPINION OF THE CONSULTOR. The Consultor, in the aforementioned opinion (which I will reproduce in its entirety), thoroughly examined all matters, since the case, which rests on a fact of this nature, is a difficult one; and he presented all the testimonies in such a way that, following a clear and logical path, he resolved or addressed the difficulties encountered, leading him to the opinion that the profession was nullified by force, which we call reverential fear. At the beginning of the opinion, he spoke of the proceedings, demonstrating that the judicial order and the substantial prescriptions of the Benedictine Constitution *Si datam* were observed. Indeed, both Defenders of the profession, appointed by the Capitular Vicar, had taken an oath according to the prescribed form; the father of the actress, as well as her aunt and grandmother, were summoned; for one of them had died, and they were considered accomplices; the witnesses were examined regularly, in secret and individually. All were questioned, both about the actress's presentation to the Chapter, and about the interrogatories of the Defender, and before the same Defender; and all and each confirmed their depositions, or, for the illiterate, by means of a notary.

[*Latin ed. p. 277*]

Restitution in Integrity and Nullity of Profession 277 Concerning Witnesses. Eleven witnesses were heard, of whom seven were nuns of the choir, four were of advanced age (septuagenarians), three were of middle age: two other women, who had previously been converts in the same monastery, now joined in marriage, one woman, a friend of the family of Mary, and of advanced age, and another woman who had long been a servant of the same family. It was observed that the testimonies of all these seemed to favor the truth, and that the variety of accounts appeared to exclude collusion and fabrication. Furthermore, the brother of Mary, her mother, and her grandfather, and finally her father, were heard; these indeed conform to the Benedictine Constitution, which states: "Defenders of the monastery, and also those who have professed vows, or relatives, or others to whom she has given or bequeathed her goods, all those whose

Translated by churchlatin.ai, a product of Boyne Archives

interest it is to maintain the validity of the profession, must be cited and heard, especially those who are judged to be authors or accomplices of the fear instilled." The father requested that, as soon as possible, the nullity of the profession be declared, since he had learned, although too late, that his daughter had been deprived of her divine vocation. The aunt and grandmother considered the profession to be valid; indeed, the aunt affirmed this with a certain vehemence and length, saying that Mary had changed her mind upon leaving the monastery, that she had intended to lie against her vows, that she had been concerned about giving false testimony, that the nuns were deposing against her, the aunt, in order to vindicate themselves, etc. However, the Consultant observed that such an exaggerated defense of the profession, written, seemed to be the work of some lawyer, and that it was not likely that all the witnesses had lied, especially the four septuagenarian nuns, one of whom had long been the Abbess of the monastery; all the more so because the witnesses did not show hatred or animosity towards the aunt, although they testified about her preference for her niece and her care that her niece should become a nun. As for these matters, the Consultant, considering the merits of the case, and first concerning the restitution in integrity, showed that, during the five years allowed for appeal, with the help of the fra-

[*Latin ed. p. 278*]

278. To restore her to her former state and to examine the nullity of her profession, Mary presented to the physician a testimony, under the pretext of illness, so that, leaving the monastery, she might act to invalidate her profession. Finally, the medical certificate she had obtained that day was torn apart by a sudden agitation of her spirit. In the last years in which she remained in the monastery, as a witness testified, Mary was afflicted by an illness, and she was compelled to leave the monastery so that she might be properly cared for with the help of baths; but having obtained the medical certificate and having shown it to the witness, she immediately tore it apart, saying: "This is a useless thing!" And, at the same time, she falsely accused the witness of sin, claiming that it was not permitted for a nun who had made her vows to leave the monastery without a serious reason. But the same witness, in her defense, testified that Mary was always present in the monastery and declared herself to be a nun who had made her vows, and that she never doubted her profession. Therefore, since Mary attempted to appeal only once, and at an opportune time, but was unsuccessful, it did not seem that the restoration to her former state should be granted, given the law of Trent: "Let no appeal be heard except within five years from the day of the profession." However, since the judgment regarding the restoration to her former state today depends most heavily on the examination of the reasons presented to prove the nullity of the profession, the Consultant turned to this second question, from which the outcome of the case is fully

Translated by churchlatin.ai, a product of Boyne Archives

derived. Therefore, recalling the reasons for the nullity of the profession, he observed that there was never any place for a grave fear in a constant man: indeed, there was not even that fear which is called reverential, if obtaining it requires permissions and threats, which the father usually employs, etc., as many authors state: for this fear is to be distinguished from those arising from blows or threats. Certainly, as the witnesses testified, Mary loved her father, and her father loved her in return; she loved her parents. I quote the words of some of the witnesses: "After her profession, Mary spoke well of her father, to whom she showed all her love; not so of her mother; for she believed that her mother wanted her to be a nun completely; towards her aunt and her grandmothers, she was indifferent."

[*Latin ed. p. 279*]

Restitutionis in integrum et nullitatis Professionis 279 « demonstrated ». Furthermore: « She was devoted to her father, aunt, and grandmother, but she complained about her mother, so much so that she was distressed if her mother came near the monastery ». Furthermore: « She preferred her father; she seemed to reject her mother, saying that it was her mother's fault that she was becoming a nun, and that the blame fell on her mother for the fact that she was becoming a nun ». This is consistent with the mother's judicial confession. Therefore, the Consultant concluded, if no other criterion is to be admitted besides the grave fear or reverential dread with the threats and intimidations described above, then the case has been proven, and the profession should be considered valid, because it is clear from the proceedings that the father's will was determined that his daughter should become a nun. Furthermore, Mary, in her Chapters against the validity of the profession, also indicated a certain action by her aunt, who, when the matter was being discussed of 'giving votes after the Novitiate for admission or exclusion from Profession, with only one vote lacking, gave the vote of the absent one, without any mandate, for her niece Mary: and from this action, several questions arose among the nuns. But the Consultant pointed to the text in chapter Nullus of the Rule, in which it is said: "No one shall be tonsured, unless at the legitimate age and with spontaneous will"; and, noting that a vow receives its name from the will, as from the first mover, and therefore the obligation of the vow is caused by one's own will and intention, St. Thomas, 2, 2, q. 88, art. j ad j; art. j 1 1. See similar things, which are noted in the discussion of the cause, Super deliberatione capitulari, in vol. I, p. 153 and following.

[*Latin ed. p. 280*]

He endeavored to demonstrate the nullity of the profession due to the lack of free consent. Indeed, several witnesses testify that Mary did not have a vocation to the religious life; she was foreign to the monastic state. This was evident both from the manner of her dress, and from her pleasure

Translated by churchlatin.ai, a product of Boyne Archives

in arranging her hair, which she often kissed; and also because, six months before her novitiate, while she was in her father's house, worldly affections influenced her, and she discarded the monastic garments which the Educated women wore; for which reason, her father, rebuking her, compelled her to put on the monastic habit again. She showed aversion to the monastic state, when, on one occasion, she said to a certain witness that she did not want to become a nun; and at another time, out of indignation, while arranging her hair, she uttered scornful words about her hair, as if it were something abominable. While living in her father's house, and asked by a servant why she did not reveal such an adverse sentiment to her parents, she replied that she did not feel inclined to express it verbally; but that they could, however, easily recognize it from her behavior. And she lived during that time with great sadness; all of these things are fully confirmed by another witness. Upon returning to the monastery, and asked, because of the disturbances that afflicted her, why she did not report this sentiment to her parents, she replied that she did not feel inclined. Therefore, she entered the monastery weeping, which her father forced her to do, although she herself no longer wished to enter the monastery. All of these things are fully testified to and repeated by the witnesses, so that it is clearly established that Mary abhorred the monastic state. It is said that, on one occasion, when her mother suggested to her husband that her daughter's entrance into the monastery should be stopped, she received the reply: She should have thought about this before Maria entered! Whether she will enter the monastery or not, she must either do it or die. But what is certainly known is that Mary, besides the complaints and disturbances with which she was afflicted, while entering the monastery again in order to become a nun, left these words in writing to her mother: "Oh, inhuman cruelty! To make a perpetual sacrifice of one's daughter!" The mother did not fail to show these words to her husband.

[*Latin ed. p. 281*]

Restitution in its entirety and the nullity of the Profession, 281, and other circumstances; but it is said that the man said that a remedy remained: nevertheless, after the daughter was taken to the monastery, a day was set for her to enter: therefore, her mother became infirm, and, as the day of entry arrived, while the infirm mother wished to embrace her daughter, the latter, overcome by anger, left without her mother's blessing, and the mother, weakened, fell. However, the daughter, led to the monastery with some ceremony by her father, showed no sign of joy, but rather, there were signs of despair, which the girl often displayed: although neither the aunt nor the grandmother said that they knew anything about these things. Furthermore, it is said that the father, whenever he heard that his daughter was rejecting the monastic state, neglected such complaints as if they were follies. Moreover, witnesses testified that Mary was of a timid disposition,

Translated by churchlatin.ai, a product of Boyne Archives

and that she could not resist her father, aunt, and grandmother, nor could she oppose pleasing them: and they also testified that she was constantly led by her aunt and grandmother with flattery, so that she would be happy and become a nun. However, in this way, after completing her novitiate, as the day and moment for the solemn vows approached, the following occurred: "When the solemn Mass had begun, the witness was invited by Mary's aunt to call her from the confessional and to come to the place where the solemn profession was being made. Having been called, and urged to hurry, because, since the Mass had already begun, if she arrived after the entrance, there was a fear that the nullity of the profession might arise, Mary boldly replied: "Indeed, it would be better!" And before she approached, she deliberately went to the place where her mother was, and addressed her with these precise words: "Are you content that I sacrifice you, and that I sacrifice my daughter! I hope that under the black veil, you will die." And not content with this, the witness snatched her from that place, so that she would hurry and go to make her profession, and as they were walking together, she asked her if she wanted to see the Visitor, so that she could declare that she was not freely becoming a nun? She replied: "Not at all; I absolutely must become a nun," and she burst into tears."

[*Latin ed. p. 282*]

282 Concerning the Restoration to the Original State and the Nullity of the Profession. After the profession, another witness testified that Mary, while she was insane, had made a vow to God during the profession; and she responded: "I did not make this vow with a sincere heart; but I only pronounced these words with my lips." The same witness also recounted that, shortly before the profession, Mary had said: "I hope that I will die under the black veil during the profession"; and she said this in order that it might be a perpetual source of anguish for her parents, who had obligated her. After the profession, what happened can be briefly stated: she constantly showed herself to be harsh and troubled towards her mother; she was often overcome by anger, which reached such a point that, on one occasion, she locked herself in her room, so that it was necessary to enter through her window with the aid of a ladder: this disturbed the nuns, so that they judged that Mary was of unsound mind in the monastery. And both before and after the profession, she detested the very walls of the monastery and all those who lived there, so that she preferred a miserable and impoverished life, rather than living in a place where God did not call her. Although the witnesses affirm that Mary observed all the rules of the monastery, they nevertheless noted certain things: either levities, or sudden changes of mood, or a tendency to love men, which caused scandal to the community and others, or particular friendships with other women from the monastery who were not of good reputation, with whom she conversed during the time of Mass, which caused distraction to others;

Translated by churchlatin.ai, a product of Boyne Archives

or a frequent presence in the parlor, etc. And it is not surprising, as St. Augustine says: "For no one can make a true promise to the Lord, unless he receives from Him what he promises." *Civit. Dei, I. i y, c. 4, n. y.* After the Consultor had examined, weighed, and explained almost everything in the process, he added some passages from the holy canons in order to support his opinion. He observed, from St. Thomas, 2, 2, q. 88, art. 1: "For a vow, three things are necessary: deliberation, the purpose of the will, and a promise." But the purpose, as the same angelic Doctor teaches, is best manifested through actions; but Mary's actions were contrary to the profession, which she also said she had made only with her lips. Therefore.

[*Latin ed. p. 283*]

Restitution in its entirety and the Nullity of Profession 283. It is also certain that obligations imposed by consent are invalid when it is discovered that consent was lacking; however, repeated complaints often declare a repugnance of the mind and remove consent. This is especially true because, as the authors teach, when it comes to marriage, a greater and more perfect voluntary act is required than for other contracts, which should be said with even greater reason regarding spiritual marriage, because it imposes obligations that surpass the powers of nature. (Pontius, *De Matrim.*, L. 4, c. u; Rodriq., *q. regular.*, 1 t. 3, q. 17). This voluntary act is opposed by a grave fear and compulsion, so that, because of this force and fear, marriage and religious profession are considered, by their own right, null. Having indicated the distinction that exists between force and fear, since force is defined in law as a greater impetus that cannot be resisted, and fear is the trembling of the mind due to an imminent or future danger, the most learned Consultor observes that the fear we speak of, which is reverential fear, consists in force, which can be given without the trembling of the mind. Indeed, the Sacred Canons considered this, as in chapter 14, concerning betrothals, where it is written: "When consent is lacking, fear or coercion intervenes; it is necessary, therefore, that where the consent of each is required, the matter of coercion be repelled." Although there are doctors who do not admit reverential fear to render marriage or religious profession null, unless it is accompanied by grave threats, customary beatings, etc., as Sánchez, *De Matr.*, I. 4, disp. 6, n. 11, nevertheless there are many authors who think otherwise, and, omitting the rest, for example, Engel in the title on betrothals and marriage, § 5, n. 4: "If, besides reverence, other aids are present, from which it can be gathered that someone was truly unwilling, such as dangerous threats, importunate persuasions, and, if I may say so, if a modest contradiction would have been of no help, then reverential fear is also a just..." 1. Compare the cause of marriage, which I

Translated by churchlatin.ai, a product of Boyne Archives

have explained in vol. II, p. 6 and following.

[*Latin ed. p. 284*]

284 "Restitution in integrum" and "nullity of Profession" are matters "to be feared." These indeed are closely aligned with the theme under discussion. After these remarks, the Consultor spoke about the ratification, which he excluded from the matter at hand. I need not elaborate further on this point, especially given what has already been explained; moreover, after the Council of Trent, if a profession is demonstrated to be null, ratification or tacit profession seems to have no place, unless all that is substantially required for the act is repeated, or unless the solemn profession itself is repeated, as can be seen from Donato Praxi Reg., vol. 2, tract. 8, q. y, and from the Sacred Congregation of Councils in the Sicilian case of November 18, 1719, in which the matter concerned Religious who had made a profession before a superior Religious who was not legitimately appointed, since the Chapters were illegitimate; and the doubt raised was: "Is the new consent of the Vota required in the ratification of a profession in this case?" The response was: affirmative, in the case under consideration, and furthermore. When the Provincial, who, according to the constitutions of the Discalced Carmelite Order, must grant permission to make a profession, in addition to the Chapter, and who did not intend to grant it, raised an objection: again, on December 16, 1719, the formula for raising a doubt was proposed: "Is the new consent of the Vota and the Provincial required in the ratification of a profession in this case?" The response was: affirmative.

OBSERVATIONS OF THE DEFENDER OF RELIGIOUS PROFESSION. The defender of the religious profession, in order to demonstrate that the profession was not made under coercion and is to be considered valid, initially presented, above all, the testimony of the aunt, which, as I have stated before, was entirely aimed at demonstrating the injustice of the objection, repeatedly affirming, contrary to the depositions of almost all the witnesses, that Mary freely and willingly became a nun. And he stated that not any kind of force or fear renders a profession invalid, but rather that a certain fear is required, which is experienced by a steadfast man, whose conditions Barbosa describes in Vot. decis, 77, n. 47: "The first condition is that the evil feared must be grave; the second is that the one fearing must not vainly and lightly believe."

[*Latin ed. p. 285*]

Restitutionis in integrum et nullitatis Professionis 285: "That evil threatened her, but probably and reasonably: 'thirdly, that the one who inspires fear is powerful enough to carry out the threats; fourthly, that the one who inspires fear is accustomed to carrying out threats; fifthly, and finally, that the one who is afraid cannot easily avoid the evils that are feared, namely, by seeking help from someone or by consulting a superior.' Here, fear is

Translated by churchlatin.ai, a product of Boyne Archives

said to fall upon a 'constant man': he observed that she had not experienced such a grave fear, indeed, not even a slight one, in this matter. Moreover, if her aunt and grandmother were to entice Mary with flattery, this should be attributed to natural affection, and not to coercion as a nun. And from this, it is clear that, when after almost six months, Mary was taken to the monastery, her aunt, in the presence of her father and mother, obligated Mary to express her will, and, urging her with words, said that if she did not want to become a nun, she would lose nothing that belonged to her; to which Mary replied: 'that she would freely choose to become a nun, and that she would maintain the day on which she was to enter the monastery.' Furthermore, it was found in the process that there was nothing to demonstrate grave threats and cruelties; it is, therefore, permissible for parents to express their desire and to exhort their children to become religious, thus considering the salvation of their souls. Indeed, the Council of Trent, while condemning coercion to enter a monastery, to receive the habit of any religious order, or to make vows, Sess. / 5, c. 18, de Reg.; does not condemn exhortation, since the same Council teaches: 'It is better and more conducive to salvation to remain in virginity or celibacy than to enter into marriage,' Sess. 24, can. 10, de Matr. Nor is it sufficient to have a reverential fear, which is entirely based on imagination, but a fear is required that is joined with the apprehension of some great evil, according to the text in Insinuante 7, where Innocent III is said to have responded: 'When a noble woman insinuated, it was reserved for our Apostleship, that a certain Curial had supplicated the King of LeÃ³n for her, so that he would marry her; when he learned of this through the knowledge of relatives, he urged her to take a husband under royal oath.'"

[*Latin ed. p. 286*]

286 Concerning the restoration to integrity and the nullity of the Profession: "They suggested: but she, who at that time did not wish to marry, received counsel from them to make a vow of chastity, which she did in the hands of one of the brothers of Saint Augustine, with the condition that she would remain in her own house with all her possessions. Indeed, she remained in the habit of that Order for two years afterward, although she asserts that she did so unwillingly and not so much out of fear, but at the urging of her parents... Finally, considering that she made the vow unwillingly, and having disregarded the counsel of her parents, she was publicly married by Father Michael, from which union four children were born in the following years... Therefore, considering that in the making of the vow that preceded, patience and perseverance were lacking, and that it was extorted, and considering the subsequent marriage, we decree that, since there was no coercion whatsoever, or at most a very slight coercion, the subsequent events were entirely unjust and violently violated her rights; and, furthermore, if a woman is dismissed from a religious order for the

Translated by churchlatin.ai, a product of Boyne Archives

purpose of being lawfully married, and if it is necessary to use force, the ecclesiastical court should be warned and should take measures to prevent such coercion." Thus, Reifisenstuel, book 1, Decret., title 11, number 165, wrote that "merely reverential fear, without any other circumstances (such as atrocious threats), does not seem sufficient to terrify a steadfast person and to instill in him a grave fear, as is argued in chapter Insinuante, where it is held that a vow made under the command of a king or parents is not null; consequently, reverential fear is not a grave fear, nor does it invalidate the profession, as is clear from other texts of law... where, besides reverential fear, some other circumstance is always required, e.g., threats, force, deceit, etc., to constitute a grave fear." Indeed, the Defender for the women argued that a lesser fear was sufficient; but no one has ever said that the mere desire of parents constitutes a grave fear: especially since a father has always pursued his daughter with love. At that time, a religious profession, which was held in high esteem, could perhaps have been tacitly validated, even if it was perhaps originally flawed.

[*Latin ed. p. 287*]

Restitution in its entirety and the Nullity of Profession 287. But if the daughter perhaps did not wish to reveal her desires to her father, or did not dare, why did she not do so to the Visitor, who had previously ascertained her will before her profession, and to whom she had free access? If, therefore, fear was present, then it must be considered that everything was a mere fantasy and utterly useless for invalidating the profession; and if she made the profession without her will, she must bear the blame for it, and the Church must not judge concerning hidden things. Concerning this matter, Nicholas writes in canon 6, dist. 27: "Concerning the woman who, after the death of her husband, placed the sacred veil upon her head, and pretended to be a virgin under that most holy veil; afterwards, she returned to marriage, it seems good to me (because she wished to disturb the ecclesiastical rule through hypocrisy, and did not legitimately remain in her vow) that she should atone for the wicked deception and return to that which she promised, and remain in the sacred ministry which she began." Indeed, it is customary in such cases to ascertain whether the consent was lacking, if it is absent, from the circumstances preceding the profession, those accompanying it, and those following it; but after considering all that the Defender indicated (and which we omit for the sake of brevity, since we have already indicated almost everything), he concluded that nothing was found to demonstrate that the consent was lacking in the profession. After these and other matters have been extensively explained and discussed, the proposed questions are to be resolved: I. "Does it pertain to the causes for restitution in its entirety in this case?" II. "Does it pertain to the nullity of the religious profession in this case?"

RESOLUTION. The Holy Congregation of Bishops and Regulars, having

Translated by churchlatin.ai, a product of Boyne Archives

knowledge of the case on May 3, 1872, judged it fitting to respond: To I. This will be provided in the second [question].

[*Latin ed. p. 288*]

288 Concerning Restitution to the Integral State and the Nullity of Profession: To be consulted with the Most Holy [authority] for a dispensation from the vows, for caution's sake. From which [points] one may gather: I. That a grave fear or compulsion falling upon a steadfast man renders the religious profession, as also marriage, null by its own right. II. That the fear, which we call reverential fear, consists in a force which, although not inflicted by violent or sudden means, is nevertheless inflicted in such a way that, considering the persons and circumstances involved, it produces a similar effect on the mind of the person affected. III. Therefore, since it is not the manner in which the force is inflicted that renders the profession, or even marriage, null, but rather the compulsion in the mind of the person affected, resulting from the force inflicted, which compels the unwilling to profess; reverential fear, as well as open force, renders the profession null. IV. Therefore, it is futile to inquire whether atrocious threats, permissions, etc., are necessary to constitute reverential fear, when it is clear that a meticulous person has been so surrounded that, against her expressed will, she has been compelled to profess. V. In the case of Mary, a girl of a versatile nature, she was so surrounded, both by the firm desire of her father, and especially by the continuous enticements of the nuns associated with her, that her inconstant will, although aroused by sudden outbursts of feminine anger, could not remove her from the path on which she had been placed from childhood, and which she had been pursued along with strong chains of flattery, until the act of profession, which she was unable to effectively repudiate. VI. In such circumstances, the profession is null, although the Holy Congregation, considering the difficulties encountered in the matter, has deemed it safer to consult the Most Holy [authority] for caution's sake, in order to grant a dispensation. 1 1 This reason is similar to that which I presented in Vol. I, pages 471 and following.

[*Latin ed. p. 289*]

Restitutionis in integrum et nullitatis Professionis 289 VII. Furthermore, you should understand that a religious profession that is null is not validated by ratification, unless the essential formalities are repeated, which are required by law for the validity of the act; except, perhaps, in the case where the profession was null due to a hidden defect.

1. ON THE OBLIGATION OF MISSES. March 1, 1872. Summary of the case. By an instrument drawn up by a Notary, requested on July 28, 1718, the Priest James M donated certain funds for the purpose of erecting an altar and a chapel in the new parish church of the place B, in the diocese of JV. The executors of this pious disposition were appointed the Archpriest

Translated by churchlatin.ai, a product of Boyne Archives

and the senior Priest of the same parish, according to the law, so that if there were no Priests or Clerics of the family M, they should have celebrated in the aforementioned altar being erected as many manual Masses as his intention dictated, with the usual alms of ten pence for each Mass. However, if there were any member of the aforementioned family M who was a Cleric, he should first of all be concerned with the office of said altar, with the obligation of celebrating, or having celebrated, in that altar only on days of precept; otherwise, he may celebrate, or have celebrated, Masses wherever it is more convenient for him, with an alms that the Executors themselves may prefer, provided that it is not less than ten pence. And so that young men may always find some benefit and be more inclined to dedicate themselves to the clerical and ecclesiastical life, it is fitting that, for each Mass that they themselves celebrate, or have celebrated, they receive from the Executors double the alms, that is, twenty pence for each.

1. See the case concerning Restitution in integrum, etc., which I mentioned in Vol. V, page 401, and which I noted there on page 412, in which sense I have said here: except, perhaps, in the case where the profession was null due to a hidden defect. Ada, Vol. VII, sect. LXXVII. 19.

[*Latin ed. p. 290*]

290 The expenses of the Masses should amount to ten obols for each Mass, and so that they may also be able to maintain the title of this perpetual chaplaincy. It is not certain from the records how much was actually received for this chaplaincy at the time of its foundation; however, it appears that the sums were generally sufficient to cover the proper expenses for the Holy Orders title, after deducting the Masses celebrated on festive and working days. It is, however, known from the ten-year administration record from the year 1786 to 1796 (which is the only administrative document found) that the alms for Masses celebrated on festive days amounted to sixteen obols; and for Masses celebrated on working days, ten obols. Subsequently, whether due to neglected funds, or an increase in the alms for Masses, or both reasons, it no longer appears that sufficient funds were received to satisfy the wishes of the founder. Indeed, in the year 1819, a certain Andrew, of the same family M, bequeathed 309 scudi, to be added to this chaplaincy, to be invested in a free fund, so that the chaplain might have a greater and more appropriate portion. However, this sum was never invested by the heirs, and they also refused to pay the interest to the current chaplain. Furthermore, in the year 1849, a certain Francis B, as father and guardian of the minor son Aloysius, who had been duly appointed to this chaplaincy, petitioned for a reduction in the expenses, so that he might receive some assistance from this chaplaincy for the ecclesiastical education of his son; and he obtained a decree for three years, during which time the Masses were reduced to those celebrated only on festive days. In the year 1853, Aloysius B was succeeded by Vincent B, to whom, due to

Translated by churchlatin.ai, a product of Boyne Archives

his minority, an administrator presbyter was appointed by decree of the Bishop, who diligently administered the chaplaincy until the year 1862; however, when he did not notice the expiration of the Indult, he began to celebrate Masses only on festive days. Moreover, Vincent B himself, having reached his majority and being released from administration, out of good faith, took care to fulfill the expenses until the year 1866.

[*Latin ed. p. 291*]

Concerning the Expenses of the Masses 291. However, having detected an error, Vincent B (the present chaplain, descended from the founder's family), exerted every effort to determine how many Masses he was obligated to celebrate, both in the past and in the future; but the founder's will did not seem entirely clear to him, given the present circumstances: namely, whether the doubling of the alms received by the chaplain should only apply on weekdays, or also on feast days, for which Masses, due to the difficulty of access to the church, receive alms of forty obols, which may perhaps need to be increased. Furthermore, it was difficult for him, with such a change in income, to determine the expenses, so that the chaplain would have a suitable portion remaining, in accordance with his priestly ordination. Therefore, having presented a detailed report to the Sacred Congregation of Bishops and Regular Canons in 1869, he explained that he had brought the endowment of the chaplaincy to a better condition, so that its income now amounted to approximately 63 scudi per year, after deducting the expenses for Masses celebrated on feast days and other expenses; therefore, over a period of thirteen years, that is, from the year 1852 to 1866, he himself had earned 819 scudi, which, according to the law of the foundation, should have been used to provide for so many Masses; however, this money, received in good faith, had been spent for eleven years to alleviate the poverty of his family, until the same chaplain, in the year 1864, with the help of divine providence, saw an improvement in his domestic situation. Hence, he implored: 1° A benevolent dispensation for those eleven years, from 1853 to 1864. 2° The faculty, for the two subsequent years, 1865 and 1866, to apply the income he received to redeeming the chaplaincy endowment from those who had usurped ecclesiastical property, with the intervention of legitimate patrons, and in accordance with the norms established by the Holy See. Furthermore, he proposed several points to resolve certain doubts. After submitting these requests to the Bishop, and after the truth of the requests had been confirmed, he presented the formulas of the doubts, upon which the entire solution of the matter depended: these formulas for raising doubts are found in O.

[*Latin ed. p. 292*]

292 The burden of the Masses weighs heavily upon him. Furthermore, the Bishop presented his opinions, by which the doubts should be resolved,

Translated by churchlatin.ai, a product of Boyne Archives

and among other things, he noted that the suppliant Chaplain had already celebrated a certain number of Masses, according to the Bishop's counsel, in order to begin fulfilling his obligations, albeit with some involuntary omissions. A concise discussion. REGARDING THE FIRST DOUBT: It is observed against the Chaplain that the Holy See is distinct from fulfilling the obligations of the Masses, not only in order to preserve the will of the founders, but also so that the founders are not defrauded of the precious fruits of the sacrifice; therefore, if any legitimate reason militates in favor of a dispensation, it is preferable to fulfill other obligations rather than the obligations of the Masses; as is commonly noted in the documents of these cases, which are treated by the Sacred Congregation of the Council. It cannot be objected that the Chaplain was unaware of the cessation of the indulgence; for while this might excuse him from guilt, it does not excuse him from the obligation; especially since there were revenues available which he received through double alms, with which to satisfy such an omitted obligation. In these circumstances, the Sacred Congregation of the Council has repeatedly denied absolution from the obligations of the omitted Masses, as in *Ecclesien*, August 16, 1864; *Ostuen*, December 4, 1784; *Aesina*, March 26, 1824, regarding the second doubt; *Ianuen*, November 19, 1825. However, if an absolute dispensation from the Masses were to be granted due to the necessities of his family, up to the year 1864, it should nevertheless not be granted for the two subsequent years, during which the condition of the family improved. It does not seem equitable that the revenues of those two years should be spent on recovering funds instead of celebrating Masses, because this would involve a change of will, which is not usually granted without a serious reason, and through which the condition of the Chaplain would become better, depriving the founder of the prescribed benefits. REGARDING THE SECOND DOUBT: It is observed against the Chaplain, the suppression of feast days, which at the time of the founda-

[*Latin ed. p. 293*]

The decrees concerning the reduction of feasts were not intended to alter the divine worship itself, but only to dispense the faithful from the obligation of attending Mass, as the Holy Congregation of Rites decreed on May 23, 1798, adding the clause: "that nothing be innovated concerning ecclesiastical functions." Indeed, Benedict XIV, when suppressing certain feast days in Sicily, only freed the faithful from the obligation of abstaining from servile works, while the obligation of hearing Mass remained; and although the same Pontiff, in certain provinces of Poloniae, on September 1, 1745, dispensed from the obligation of hearing Mass, he nevertheless added: "we do not intend to innovate anything concerning the service of the choir, either as regards the celebration itself or as regards the divine offices." This limitation was also added by the Most Holy Father on Septem-

Translated by churchlatin.ai, a product of Boyne Archives

ber 6, 1853, when Sardinia reduced the feast days by decree, stating nothing about innovation: "Indeed, we have reduced and command that the liturgy be observed in the churches on these days of celebration." And this constancy of the will of the Pontiffs was declared in the Encyclical Letter of May 3, 1858. It has also been observed, in accordance with this law, that a custom also existed, which, from the year 1741 until the year 1844, Masses were celebrated in the altar of the chapel even on feast days that had been suppressed; and from the year 1845 onwards, they were celebrated only on feast days that were obligatory.

REGARDING THE THIRD DOUBT AGAINST THE CHAPLAIN, it has been observed that the entire question depends on the interpretation of the founder's will, namely, whether the founder intended to signify by the double Mass offering a double offering of real alms that would be given according to the variety of times to the celebrant, or whether he intended to signify a double offering, which at that time was in effect, so that the chaplain should constantly receive ten obols above the Mass offering. Since this was a question only of will, it has been observed that the primary intention of the founder was to offer suffrage for the soul, and secondarily, for the benefit of the chaplain.

[*Latin ed. p. 294*]

Regarding the 294th item: The expenses of the Masses, pertaining to the Chaplains, who are from his family: it must be understood that this provision is to be strictly interpreted, so that it does not detract from the primary intention. Therefore, one must not deviate from the founder's words, who stated that twenty *oboli* should be given for each Mass, so that ten *oboli* remain for him. This income appears more than sufficient, so that the Chaplains may be provided for with a perpetual chaplaincy. Regarding the celebration of Mass on feast days, it has been noted that, according to the aforementioned document from the ten-year administration from the year 1786 to 1796, the alms for Mass on feast days during that time were 16 *oboli*, and the Chaplain did not receive double the alms for these Masses, but only for the weekday Masses. However, if this observance is closest to the law of the foundation, it should be judged according to it, since the observance that is closest is the best interpretation of the will. If, on the contrary, it were said otherwise, an inconsistency would also arise, since, if the alms on feast days are 40 *oboli*, the feast day Masses would absorb a large portion of the income, which is intended for the founder's suffrages.

Regarding the fourth doubt, it has been noted that the question is merely hypothetical, since the present income appears sufficient, both for celebrating the Masses and for a suitable synodal portion for the title of Holy Orders. However, if the question were to be answered in a general way, the Resolutions of the Holy Congregation in Ariminen, of November 22, 1717, August 8, 1722, and April 24, 1723, would be recalled, in which, after a thor-

Translated by churchlatin.ai, a product of Boyne Archives

oughly discussed article, it was debated whether the expenses of Masses should be deducted from the benefits or from the Chaplain, when calculating the amount of the suitable canonical portion; and after considering the opinions, which were often contradictory, it was finally resolved on July 17th: that it should be left to the judgment and conscience of the Ordinaries.

Therefore, since it is not necessary that a suitable portion be given for the title of Holy Orders, see also Appendix XIV in Volume IV, page 559.

[*Latin ed. p. 295*]

Regarding the burden of Masses: 295. It does not seem equitable that, in the case of a chaplaincy, Masses should be deducted from the total count when calculating the appropriate synodal contribution, thereby relieving it of the burden of Masses. The following observations have been made to the contrary, concerning the first doubt. It has been noted that the favor of the petitioner is to be considered, and that good faith is a valid reason for obtaining absolution from Masses that have been omitted, as evidenced by the Sacred Congregation of the Council in Turin, Absolute Decree, 1, 8, 43; in Spoleto, November 29, 1824; and in Sorrentino, January 25, 1845, among others. Furthermore, the revenues from Masses up to the year 1864 were used to alleviate the poverty of the chaplain's family; therefore, the Holy See can more readily grant absolution, as evidenced by the Sacred Congregation of the Council in Ravenna, June 28, 1804, and elsewhere. In addition to this, a large number of Masses are involved, which would have required the chaplain to exert considerable effort to fulfill; and in this case, the Sacred Congregation of the Council in Spoleto, March 1, 1729, and in Ferentano, September 16, 1808, granted absolution. Conversely, it has been noted that the chaplain has already celebrated a sufficient number of Masses with the consent of the Bishop, in order to make amends for those that were omitted; and this could serve as a salutary penance, which is often added to the clauses of indulgences of this type. Furthermore, it has been noted that the requested absolution does not extend beyond the year 1864; for the two subsequent years, a change of intention is requested, so that the funds spent on Masses may be used to restore the chaplaincy's endowment. Moreover, to grant a change of intention, there must generally be sufficient reasons, such as the necessity or evident benefit to the Church; especially if the change of intention is temporary or only for a single occasion. It is not uncommon for Masses to be reduced or suspended when it is necessary to consider the repair of the church or the needs of the benefice's houses and other assets, as evidenced by the Sacred Congregation of the Council in Viterbo, March 2, 1765, and 1784; in Laodicea, May 18, 1776; and in Syracuse, February 8, 1713, among others. Regarding the second doubt, it has been noted that the obligation to celebrate Masses appears to

Translated by churchlatin.ai, a product of Boyne Archives

be limited to the altar of the chaplaincy.

[*Latin ed. p. 296*]

Regarding the second point, only the feast days are mentioned as obligatory: for it seems that the supreme law is the will of the founder, who did not appear to prescribe the celebration of Masses in the chapel's altar on feast days for the greater glory of the church itself, but rather for the greater convenience of the people; which is the reason why the founder seems to have said only about the feast days, especially since, as the Bishop testified, that parish church was abundant in Masses. Therefore, by suppressing the feasts that were previously obligatory, the purpose intended by the founder ceases, and the very obligation to celebrate Mass in that particular church and altar also ceases.

Regarding the third point, in favor of the petitioner, it has been noted that the founder explicitly stated a double offering; and if he said this, meaning twenty denarii for each Mass, so that ten denarii might remain for him, it seems that he did not mean it in a strict sense, but rather in a demonstrative sense, since at the time the chapel was founded, it was stipulated by order of Clement XI on December 23, 1706, and by the Decree of the Holy Council on April 23, 1726, that the offering for Masses should not be less than ten denarii; therefore, since this amount of offering was in use at that time, it does not seem that the offering should be understood in a strict sense, but rather in a demonstrative sense, so that the chaplain should always receive double the synodal tax; especially since such an increase should serve as an addition to the title of ordination, which is often increased along with the offering for Masses. It is also doubtful that Masses should be celebrated on feast days, since the founder, in determining a double offering, did not distinguish between weekday and feast day Masses; nor can a mere ten-year observance be opposed to the certain will of the founder; however, it should be distinguished that what is added to the celebrant because of the inconvenience of the journey is different from a simple synodal offering, because only the offering should be doubled, not what is given because of the inconvenience.

Regarding the fourth point, in favor of the petitioner, among other things, it has been noted that the founder doubled the offering so that the chaplain...

[*Latin ed. p. 297*]

The burden of Masses: 297. Could this chapel also be endowed with a title? Why should it not seem that the founder's intention is fulfilled, if the chaplain does not receive from the synodal endowment a portion for the title of Holy Orders, free from any burden of Masses? This is why it appears that the founder did this, because this resolution of the Sacred Congregation, given in Tiburtina on July 8, 1690, in *liber decr.* 40, page

Translated by churchlatin.ai, a product of Boyne Archives

434, concerning the question: "Whether, from the benefice, to whose title someone intends to be 'ordained,' the burdens of Masses added to it should be deducted, or rather, whether, without deducting them, the calculation of all fruits should be made to constitute the sum required by the synodal constitution," yielded the response: negatively, unless it is stipulated in the foundation that, in the event of an impediment, another should celebrate, and until he attains to the priesthood, he should have from elsewhere a means of livelihood proportionate to the Masses. This was repeated in Signina, Ordinationis, on April 14, 1696, in *liber* 46, page 160. Considering these and other observations, the following questions are to be resolved: "I. Whether and how permission should be granted for the remission of Masses not celebrated from the year 1853 up to the year 1864 in this case. II. Whether the obligation to celebrate Mass in the church (B) extends only on feast days of precept, or also on those days which, although they were days of precept at the time of the founder, were subsequently suppressed. III. Whether an alms is due to the chaplain, which is ten pence above the current alms, or double the current alms, whether concerning Masses to be celebrated on feast days, or concerning Masses on weekdays in this case. IV. Whether, to the extent that the emolument which the chaplain receives exceeds the current alms for Masses, the number of Masses of weekdays in this case should be reduced so that it does not reach the synodal tax for the title of Holy Orders."

[*Latin ed. p. 298*]

Resolution concerning the Obligation of Masses. The Congregation of Bishops and Regulars, having considered the matter on March 1, 1872, responded as follows:

To I. Affirmative, regarding the dispensation from the obligation to celebrate a certain number of Masses, considering the particular circumstances, up to the year 1864, inclusive; concerning those subsequent to that date, the intention of the Congregation was that, having dispensed with the Masses for the years 1865 and 1866, it should be written to the Bishop, granting him the authority to allocate the revenues for the recovery of the funds of the chaplaincy, according to the aforementioned request, with the expressed consent of the Most Holy Father.

To II. Affirmative regarding the first part, negative regarding the second part.

To III. Negative regarding the first part, affirmative regarding the second part, but in accordance with the diocesan tax regulations.

To IV. The Congregation postponed the resolution, requesting further information, stating: "It should be delayed and written to the Bishop, who should report on the amount of the revenues of the chaplaincy."

Translated by churchlatin.ai, a product of Boyne Archives

FROM WHICH WE MAY GATHER:

I. That the Holy See, for just and reasonable reasons, can absolve a chaplain from the obligation to celebrate a certain number of Masses, which have been omitted in good faith, imposing only, as a penance, the obligation to celebrate a certain number.

II. That, furthermore, the Holy See can sometimes grant that certain revenues intended for Masses be converted into funds to be recovered for the benefit of legatees.

III. That, if ordered by the founder, Masses bequeathed by him should be celebrated in a specific church on holy days of obligation; however, legatees are not obliged to celebrate those Masses in that specific church on holy days that were suppressed after the founder's death.

IV. Since pious foundations are governed by the laws that the pious founder wished to establish, it is not useful to invoke the law of the Church, by which, through the suppression of holy days, nothing new is considered to be introduced regarding the sacred functions.

[Note: The text refers to similar cases that can be found in the aforementioned publications.]

[*Latin ed. p. 299*]

FROM THE HOLY CONGREGATION CONCILIARY OF TRENT, CONCERNING A DISPENSATION FROM IRREGULARITY. February 24, 1872. Summary of the petition. Barnabas, a priest, aged twenty-six years, a chaplain in a church exempt from ordinary jurisdiction, belonging to the Order of Jerusalem within the diocese of JV, suffered from a grave infirmity of the body, affecting the brain. For this reason, he was compelled, by the advice of physicians, to restrain his strength, both by walking and by riding. But on a certain day, while riding, it happened that a fiery projectile, launched by the custodian of a certain field, intended to kill a wild animal, exploded, and in the explosion, his left hand was violently struck and severed, leaving only the nerve connected to the arm, so that it was necessary to amputate it. In place of the amputated hand, an artificial hand was made, in which the index and thumb fingers could be moved by means of a metal wire. He supplicated the Most Holy Congregation, that he might be dispensed from the canonical irregularity contracted by reason of the bodily defect. And he added the reason that he, although poor, ought to provide not only for himself, but also for his aging father, his paternal uncle, a priest and parish priest of the Order of Jerusalem, who had become incapable of performing his pastoral duties, and also for his brother, who was lame in the leg. After the petition was presented, the Bishop was requested to provide information and a vote, and to report on the petitioner's life and morals, and after an examination before the Master of Ceremonies, to report whether he was able to perform the sacrifice of the Mass without danger of irreverence and

Translated by churchlatin.ai, a product of Boyne Archives

public astonishment. The following is among other things reported by the Master of Ceremonies: "This hand, bound around the arm, and..."

[*Latin ed. p. 300*]

300. A dispensation from irregularity may be freely granted or denied. Regarding the consecration of the Host, "it has been judged unnecessary that the Host be grasped by an artificial hand, but rather that it be adapted to the hand of the right hand and that unity be maintained while consecrating, elevating, and depositing the Host," etc. A detailed description follows, made by the Master of Ceremonies, who finally adds: "This can easily be accomplished by this priest after a few days of practice before any priest. However, lest the people be given an opportunity for offense, if he should linger for a somewhat longer time than usual in the breaking and consuming of the Host, it seems to me that he should not celebrate Mass where a large number of people are expected, but rather that consideration should be given to the place and time when few will be present." Furthermore, in the Bishop's report, among other things, it is noted that the aforementioned priest, being a chaplain of the Order of Jerusalem, received the sacred orders from a foreign bishop and not from his own, with letters of dismissal from the Superior of said military order, contrary to the Apostolic Constitutions of Innocent XIII, *Apostolici ministerii*, dated May 23, 1723, and of Benedict XIV, *Impositi*, dated February 27, 1746. Moreover, it was also reported that the funds, constituting the sacred patrimony, were not located within the territory of his own bishop. Finally, the Bishop, opening his mind, observed that the aforementioned priest was the only priest assigned to the church of the Order of Jerusalem, under whose jurisdiction he was born, although there were also presbyters and clerics of the diocese present in that city; he concluded that the priest was necessary for that church. Having considered the miserable condition in which he found himself due to the loss of his left hand, he expressed his wishes that the Holy Congregation would grant him favor and that the aforementioned priest be absolved from all censures, at least as a precaution, due to the irregular ordination.

OBSERVATIONS FROM THE OFFICE. It has been observed that the priest is irregular according to the sacred canons, and indeed both because of his deformity and because of irreverence arising from weakness.

[*Latin ed. p. 301*]

Regarding a dispensation from irregularity, 301, the sacrifice is performed according to chapter 2, concerning sick clerics, where it is written: "Nor do we believe that this can be safely done either because of weakness, or without scandal because of the deformity of the member." However, considering many similar examples in which the Holy Congregation, depending on the circumstances, either denied or

Translated by churchlatin.ai, a product of Boyne Archives

granted a dispensation, it has been observed that the extreme poverty of the candidate and the irregularity itself, not contracted through his fault, are factors considered when granting a dispensation; especially since the impediments of both deformity and weakness have been almost overcome through artifice. Moreover, if the hour of celebration were held in a less frequented church, this would further weigh in favor of granting the dispensation. Furthermore, concerning the patrimony and the irregular ordination, it has been noted that there is no law that stipulates that goods constituting the sacred patrimony must be located in the diocese of the Ordinary, as is evident from the Decree of the Holy Congregation in the case of Lauretana, December 6, 1749. The questions proposed were: "I. Whether sacred patrimonies assigned or established by promoters for the sacred orders, located in a foreign diocese, can be maintained. II. Whether sacred patrimonies assigned by promoters for the sacred orders, existing in a foreign diocese, can be maintained, when at the time of ordination, the promoters possessed goods in their own diocese." The response was affirmative in both cases, and furthermore. Regarding the irregular ordination of the candidate, it seems that the Apostolic Constitutions could not have been disregarded; however, considering the good faith of the candidate, who, in acting thus, only obeyed the orders of his superiors, and considering the recommendation of the Bishop, it was concluded that this dispensation should also be granted.

RESCRIPT. After the candidate's prayers and representations before the Holy Congregation of the Council on February 24, 1872, a Rescript was issued: "As has been explained, it is not advisable."

[*Latin ed. p. 302*]

302. Dispensations: From which [matters] you may gather: I. A priest who has become irregular due to the amputation of a hand may hope for an Apostolic dispensation if, by means of a prosthetic hand, the deformity is concealed, thereby removing the danger of irreverence and lack of reverence in the people. II. However, this is not sufficient to obtain the grace of a dispensation; but canonical reasons are required, namely, necessity or evident benefit to the Church. III. In this case, neither necessity has been sufficiently demonstrated, nor evident benefit to the Church; on the contrary, the alleviation of a priest due to poverty is not a sufficient reason for a dispensation. IV. Furthermore, you gather that, in the establishment of a sacred patrimony, there does not exist a law which prescribes that the goods of the sacred patrimony must be located within the diocese of the proper Bishop. V. A prelate of an exempt church, which is located within the diocese of a Bishop, if he has the power to grant letters of dispensation for the sacred orders, cannot escape the jurisdiction of the diocesan Bishop, unless, perhaps, he enjoys the privilege of ordaining his subordinates by any Catholic Bishop.

Translated by churchlatin.ai, a product of Boyne Archives

I. Regarding JUBILEES. On March 23, 1872. Summary of petitions. Anthony, a cleric and canon of the collegiate church in the Italian Archdiocese of Aï, having completed forty years of choral service, requested an Indult of Jubilee from the Sacred Congregation of the Council. Petitions were presented according to custom for information and a vote, and so that the Chapter might report on the continuous and laudable forty years [of service]. 1. See what I have stated regarding letters of dispensation in the case concerning the right to grant letters, in volume VI, pages 484 and following.

[*Latin ed. p. 303*]

Upon the completion of the thirty-third year of service of the choir, Erño, the Archbishop, presented himself. He, obeying the mandates, among other things, stated: "The Chapter unanimously acknowledges that the canon has rendered a praiseworthy forty years of service to the collegiate church; but since he was never promoted to the order of the Presbyterate, and therefore celebrated the conventual Mass only through another, the Chapter has presented its wishes against the canon." The Archbishop, however, refuted the reasons which the Chapter presented against the canon. The particulars of the chapter's constitutions, which were presented, along with the expenses incurred, are as follows: OBSERVATIONS AGAINST THE CANON. The canons observed that the Indult of Iubilation is odious to the church, and therefore should be granted sparingly, as stated by Ferraris: it should not be granted to a canon unless he has fulfilled all the obligations of his choral office. In Scavini, book i, treatise j, chapter 2, section 2, the following are noted as the principal obligations: care of the choir, residence, and perpetual Mass. However, the canon has not fulfilled the third obligation, since he has not fulfilled it himself, according to the Council of Trent, session 24, chapter 12, concerning reforms, which states that all are obligated to perform their duties by themselves and not through substitutes. Therefore, the canon should have ascended to the order of the Presbyterate upon accepting the canonry, as the Council of Trent urgently stated in the aforementioned chapter: "Let no one henceforth receive a dignity, canonry, or benefice, unless he has been initiated in that sacred order which that dignity, prebend, or benefice requires, or at such an age that he can be initiated within the time prescribed by law and by this holy Synody." It cannot be said that the canonical prebend, of which we are speaking, does not require the order of the Presbyterate; since the chapter's constitutions stated this, in which the following is established: "Every canon is obligated to celebrate Masses, both for the living and for the dead, himself, and not through a substitute (unless legitimately hindered)." Since there were, nevertheless,

Translated by churchlatin.ai, a product of Boyne Archives

canons in that collegiate church who were only clerics, conti-

[*Latin ed. p. 304*]

304 It is not uncommon for the sound of rejoicing to prevent the celebration of a conventual Mass. And the words: "unless he has been legitimately hindered" cannot be understood to mean a lack of the ability to celebrate Mass, but only a temporary impediment, which the words clearly indicate: "each one is bound by himself." OBSERVATIONS FOR THE CELEBRANT. It is the opinion of some that the Indult of Jubilation is granted as a reward, following the example of veteran soldiers who, for their long service, were exempted from all duties and retained the benefits of their military service, as stated by Benedict XIV, *De Syn.*, book 2, chapter 5, paragraph 5. However, it does not appear to be a weighty reason why this should not be granted to a Canon, who, although worthy in other respects, has not been invested with the sacred order of the Priesthood, since he bears the common burden with the others, and therefore should also share in the common reward, according to Rule of Law 55, section 6. Furthermore, Anthony, being a Canon of a collegiate church, is not bound by the obligation to receive the order of the Priesthood. Thus, for example, Benedict XIV, *De Syn.*, book 1, chapter 4, paragraph 5: "There are other things which, besides the clerical Tonsure or minor Orders, are required by this disposition of the law, such as the Canonicates of collegiate churches, of which the Canons, unless they are bound by their own constitutions to receive the sacred order, are not strictly required by common law, which requires nothing of them except the age of fourteen years and the clerical Tonsure, as widely demonstrated by Corradus in *Praxi Benefic.*, book 2, chapter 12; García, *De Benef.*, page 7, chapter 4, paragraph 10; Narbona, *De Aetate*, year 14, page 4, paragraph 2; Tondutius, *Quaestiones Beneficiariae*, page 2, chapter 1, paragraph 12; Pax Jordanus, *Elucidationes*, volume 2, book 10, title 20, paragraph 5; Ventriglia in *Praxi For. Eccles.*, note 6, paragraph 1, paragraph 11; Cardinal De Luca, *De Beneficiis*, discourse 2, paragraph 2. And this was also defined by the Congregation of the Council, in a matter hotly debated, in Rome, in the Chapter concerning the interests of law and the distribution of funds, on May 18, 1686, where, with regard to the Canons of the collegiate church of Saint Mary in Cosmedin in the City, it was decided that they could not be compelled.

[*Latin ed. p. 305*]

305 "For the reception into the order of Subdeacon, and therefore also those 'even if they were not instituted in the sacred orders,' may perform service 'by singing in the choir, and by properly administering distributions.' The Council of Trent, in the aforementioned passage, does not speak of collegiate churches, as commonly the Doctors teach; for example, Ciarlini in *Controversiarum Forensium*, I, i, chapter 15, number 1: 'Nor does

Translated by churchlatin.ai, a product of Boyne Archives

the Council of Trent concern itself with the assistance of Canons, as is seen in the Council of Trent, session 24, chapter 12, concerning Reform, where it is decreed that a certain number of priests must be attached to the canonry, because that decree speaks and proceeds concerning cathedral churches, and therefore it has no application to collegiate churches.' What the Holy Congregation of the Council has often taught, responding that the Council of Trent did not introduce anything new concerning the age of those who are to be promoted to a canonry in a collegiate church. Nor should Anthony be held back by the force of the capitular constitutions, when, setting aside all other things that might be observed, long-standing practice, the best interpreter of the laws, has shown the contrary, as the Archbishop rightly observed, who, referring to the fact that nothing is found in the Bull of erection that imposes the burden of the priesthood, wrote: 'What, then, should be thought concerning the constitutions? Practice demonstrates; that is, if the Canon is a priest, he is obligated to say Masses, both for the living and for the dead, by himself, and not by a substitute, unless he has been hindered by law; if he is a cleric, either because of a lack of age or a lack of will, not yet initiated into the priesthood, he must appoint another from among the Canons who will perform his duties in his place.' All the more so, because the Holy Congregation of the Council has granted an Indulgence to Canons, who, although they have personally performed the praiseworthy service for a period of forty years, have nevertheless either never or at least rarely celebrated Mass by themselves, as is seen in the Indulgence of Camerino, December 1, 1725; and in Verulana, September 17, 1842.

RESCRIPT. After the expenses and prayers presented to the Holy Congregation of the Council on March 23, 1872, a Response was issued: For the grant of the Indulgence, with the usual clauses: and according to the *Mens Acta*, volume VII, page 77, number 20.

[*Latin ed. p. 306*]

It is the intention of the Indult of Jubilation, that it be written to the Most Reverend Archbishop, so that he may ensure that a suitable number of priests is maintained in the Collegiate Church, lest it be lacking in the future. From the following points, it is gathered: I. Not all of the laws, which were established by the Council of Trent, session 24, chapter 12, concerning reforms, apply to canonical churches, but only to the cathedral church. II. Specifically, the words of the Council of Trent: "In all cathedral churches, all canonries and benefices shall have attached to them the order of the presbyterate, diaconate, or subdiaconate, and this shall be limited only to cathedral churches." III. Therefore, in collegiate churches, the old common law still holds, according to which it is sufficient for a canon to be a cleric, provided that nothing in the particular laws prevents it. IV. However, it must be ensured by the Bishop that a suitable number of priests is maintained, so that all choral duties may be properly fulfilled. V. The lack

Translated by churchlatin.ai, a product of Boyne Archives

of a sacred order does not prevent the granting of the Indult of Jubilation, since such a reward is not given for the exercise of the sacred order, but for the commendable fulfillment of choral service according to the laws and offices of the Church.

1. See also the cause of Nomination, vol. III, p. 293. Regarding the Indults of Jubilation, you will find more in vol. VI, Appendix VIII, p. 421.

[*Latin ed. p. 307*]

FROM THE HOLY CONGREGATION OF THE INDEX: DECREE. On Saturday, the first of March, 1873. The Holy Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by the Most Holy Pope Pius IX, Our Lord, and the Holy Apostolic See, which presides over the prohibition, condemnation, expurgation, and permission of books throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on the first of March, 1873, condemned and condemns, prohibits and prohibits, and orders that the following works be referred to the Index of Prohibited Books:

Lerosse, M. Pierre-Grand, *Dictionnaire Universel du X I X siècle*, etc. - Paris, 1866. - Several volumes have already been published.

Boissonade, I. A. - *La Bible Dévoilée*. Published by L'Inf. ! - Paris, 1871.

Figuier, Louis - *Le Lendemain de la Mort, ou la Vie Future selon la science*. Fourth edition - Paris, 1872.

Mangin, Arthur - *L'Homme et la Bête*. Illustrated work with one hundred and twenty engravings - Paris, 1872.

Ormanian, P. M. - *Les Droits civils et la Liberté religieuse des catholiques* - Rome, Imprimerie Romaine de C. Bartoli, 1872.

Decree of the Holy Office, Thursday, December 11, 1872.

Idem - *Il Reversurus, ovvero La Turchia ed il Papato* - Legal Studies - Extract from the *Rivista Giuridica*, year II, parts 1 and 2. - Rome, Sormanni e Cabiati publishers, 1872.

By the same Decree: Casangian, Placido (who unjustly usurps the title of Archbishop of Armenian Catholics of Antioch and General Abbot of the Antonian Order) - *Risposta Finale degli Orientali agli*...

[*Latin ed. p. 308*]

308 *Decretum Occidentali*, 1872. *Decretum S. O.*, Thursday of the fourth week, March 12, 1873. Wallon, Jean, *La Vérité sur le Concile* – Paris, 1872. Ibid. Decree. Cicuto, D. Anthony, *Il Concilio Vaticano* – *Rivista Universale*, Volumes XIV and XV, from issue 107 to 113. – Florence, 1871-72. Ibid. Decree. The author commendably submitted [his work], and I condemned it! Therefore, no one, of whatever rank and condition, should dare to publish, or, having published, to read or retain the aforementioned works, in any place, or in any language, but rather they are bound to de-

Translated by churchlatin.ai, a product of Boyne Archives

liver them to the Ordinaries of the places, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to Our Most Holy Lord Pope Pius IX by me, the undersigned, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on March 20, 1873. ANTONINUS Cardinal DE LUCA, Prefect. In place of the Seal. Fr. Jerome Pius Saccheri, Order of Preachers, Sacred Congregation of the Secret. On March 22, 1873, I, the undersigned, Master of the Curia, testify that the aforementioned Decree was affixed and published in the City. Philip Ossani, Master of the Curia. APPENDIX V. A moral question concerning craniotomy, or the killing of a child in the mother's womb, in order to save the mother. Craniotomy, or the killing of a child in the mother's womb, so that it may be extracted to save the mother; that is to say, so that neither the mother nor the child may perish, when there is no other way for the child to come forth from the womb, is commonly practiced among experts in the medical arts, who believe in good faith that the matter is permissible. However, the question is raised among confessors, whether such a craniotomy, in which the skull of the child, having received baptism, is broken and the child is extracted from the womb, is permissible or not.

[*Latin ed. p. 309*]

Appendix 309 V. It is fitting to treat this question in such a manner, so that, even if the solution perhaps does not please some, they may consider and expound what arguments they can present in opposition. The solution to this most serious question would be easy if it were sought only in the external value of opinions, or in the mere authority of authors. For authors generally resolve such a question in this way, teaching that the killing of such a child is never licit: thus, for example, Sánchez, *De Matrimonio*, book 9, disputation 20, number 14: "There are certain medical procedures that directly tend towards the killing of the fetus, such as venisection, dismemberment, and percussion; while others are ordered, either by themselves or directly, to expel the morbific agents and restore the previous health, such as the rupture of veins, baths, etc. The former type of procedure is therefore absolutely forbidden, because they cooperate directly in the death of an innocent person, which is intrinsically evil; the latter, however, etc." They also often cite the authority of St. Ambrose, which is quoted in canon. Den. Finally, causes, 14, question 5: "If it is not possible to help one person without harming another, it is better to help neither." Therefore, considering the external authority of the authors, it would undoubtedly be said that the killing of a child by craniotomy to save the mother is illicit. However, although it cannot be excused as mere recklessness, to teach opinions contrary to those held by almost all authors; nevertheless, such a rule has a limitation, as stated by Canus, book 8, on Loc. theology, chapter 4; and also by Zaccarias in page 2, chapter 5, canon 2, in his dissertation

Translated by churchlatin.ai, a product of Boyne Archives

on the origins, places, and importance of Casuistic Theology, which St. Alphonsus placed as a preface to his Moral Theology; namely: unless a very serious and evident reason, or authority, clearly and plainly obstructs. In the present question, two points must be noted: 1. That the authors do not speak accurately when they say that this opinion is held by everyone; for Sánchez himself cites three authors who hold the contrary opinion, at least two of whom are important: Marianus Socinus, the most pious father of the impious Lehi Socinus, held in high esteem by Pius II, and the most celebrated Felinus, both in chapter. If anyone, on homicide, a third is Simon Brixiensis in Clem. 1 ibid. 2. That a very serious and evident reason, not observed by the authors, arises here. As a foundation to be laid in this question, it must be established that, if craniotomy is not performed, the child will certainly die; so that the difference lies in this: that if craniotomy is omitted, both the mother and the child will die; if the remedy is applied, the child remains in the same condition, that is, dies, the only difference being the means or manner by which he dies, while the mother is saved. Furthermore, this is what no author has considered, those who place the question in a false position. For in such a question, they always considered the right of life of the child; which, once lost, is no longer of concern, and they did not notice that...

[*Latin ed. p. 310*]

310 Appendix V The right, which remained in this matter, is that of choosing the manner of dying. Therefore, the true state of the question is not that which the Authors have posited, but rather the opposite: whether an infant, when it must necessarily die, has the right to choose a means by which it perishes together with its mother, setting aside another means, which, while not worsening its own condition (since it must die anyway), would leave the mother unharmed. Furthermore, with the question thus established, I believe it to be not only clear, but also evident, that no one can claim the right to such a choice when it involves the loss of another's life, and even less so when it involves the loss of the mother's life. For what is that good in dying in one way rather than another, which can be compared with the life of another, and even more so, with the life of the mother? It would be the same as comparing an unreasonable judgment (which, being unreasonable, cannot create any right) with the supreme, good, and temporal right of a human being, and therefore of one's own mother! If, however, the reasons which the Authors put forward are examined, it becomes even clearer that they have placed the question in a false position. For the intrinsic reason which they themselves offer is this: to kill an innocent person is intrinsically evil. But are not these the same ones who teach that, in order to preserve one's own life, it is permissible to crush the head of a child who obstructs the fleeing person's passage in a narrow place? And are they not the same ones who say that it is permissible to explode war torments

Translated by churchlatin.ai, a product of Boyne Archives

against the house of innocents, e.g., against a monastery of religious, in order to capture a city? Or that, in a shipwreck, when two people seize a plank that, if held by both, would sink them both, each has the right to repel and sink the other in order to escape the shipwreck? Are not all these innocent? And does not the case of the one who crushes the head of a child with a roar correspond to our question about craniotomy? What, then, should be said? It must be said that it is intrinsically evil to kill an innocent person, provided that he is adequately such, that is, that he is formally and materially innocent; but it is not necessary to say this about one who is formally innocent, while materially he is an unjust aggressor. But the infant in the question we are discussing is not adequately innocent; he is formally innocent only: materially, however, he is an unjust aggressor, who invades the life of his mother. Indeed, what is the true and effective cause of the mother's death? It is the infant, and only the infant, who not only kills her, but also torments her cruelly. The child who lies in the road and is crushed by a roaring beast is materially an unjust aggressor, but only negatively: but the infant about whom we are speaking is a positively unjust aggressor; just as a madman, who is not the master of his actions, invades the life of another, and is therefore justly killed. It is therefore manifest that it is incongruous to make a distinction between direct and indirect ways of killing an infant: for if an unjust aggressor can be directly killed, he can also be directly killed.

[*Latin ed. p. 311*]

Appendix V 311: infant. Furthermore, such a distinction is not entirely scientific. For in matters of this kind, directness or indirectness is considered in the intention, and not in the material act, according to a most excellent principle given by St. Thomas (2, 2, q. 64, art. 7); where the Angelic Doctor explains the intrinsic reason why it is permissible to kill another in self-defense (an act indeed direct, which is understood); he says: "I answer that nothing prevents one act from having two effects, of which one is only in intention, and the other is outside of intention." However, moral acts receive their character according to what is intended, and not according to what is outside of intention, since that is accidental. This is most clearly the case in the operation of craniotomy: for its two effects are as follows, the first of which is intended and gives morality to the act, is the removal of the cause of the mother's death; the second is outside of intention, and therefore accidental, and is extraneous to the morality of the action, and consists in the death of the unjust aggressor, that is, the infant. Moreover, there are those who distinguish between the mother herself, who by her very nature defends her own life, and the physician, who defends another's life. But this distinction itself was rejected by Sánchez, in the aforementioned place, nos. 13 and 15, since the common doctrine is that whenever someone has the right to kill another, another can also perform that act

Translated by churchlatin.ai, a product of Boyne Archives

for him, when charity suggests it; and this is repeated by St. Alphonsus (1.3, no. 389). Moreover, the physician who acts by virtue of a public duty assigned to him, as Sánchez notes, in the aforementioned place. It is entirely inappropriate to give weight to the authority of St. Ambrose, which is an argument unworthy of such serious authors. For St. Ambrose, in *Office*, book 3, chapter 9, speaks of a cleric who attends to a dying man who is changing his will, so that he may appoint another heir who has no right to his inheritance. But how can this be applicable to a mother who has a true right to defend her own life? Finally, it should be noted that in craniotomy, there is also the greatest spiritual good for the infant. If this craniotomy operation is omitted, the infant dies without baptism; but if this operation is performed, he is baptized: for the instrument is so constructed that it can first tear the membrane in which the fetus is enclosed, so that water can then be poured into the head through the opening in the membrane. Authors who have not considered all these things, and who are pursuing a different line of reasoning in this matter, have uttered those words: "it is never permissible"; and as we have seen, this statement is so harsh that almost all those who have put it forward have fallen into the error that Canus described. Among more recent authors, I have heard of the Most Reverend Kenrick, Archbishop of St. Aloysius, who, in his theology, defends this opinion, abandoning the old one; but I have not been able to consult his work.

[*Latin ed. p. 312*]

FROM THE HOLY CONGREGATION FOR INDULGENCES OF THE CITY AND THE WHOLE WORLD. DECREE. "Since, among other offices of religious piety, a praiseworthy custom has arisen and has spread in many places, whereby the entire month of June is dedicated to daily exercises of devotion pleasing to the most sweet Heart of Our Lord Jesus Christ; the supplications of many of the Faithful have been presented to the Most Holy Pope Pius IX, that he might deign to grant the benefits of sacred Indulgences to those who perform these pious exercises.

"Therefore, His Holiness, having graciously accepted these supplications, in order that the injuries inflicted upon the Divine Redeemer of the human race, especially in these present times and circumstances, may be repaired; to all Christians of both sexes, who, whether publicly or privately, through particular prayers and acts of devotion, shall have dedicated themselves daily during the entire month of June, with at least a contrite heart, to the honor of the Most Holy Heart of Jesus, an Indulgence of seven years is granted, once on each day of the aforementioned month; and likewise, to the same, a plenary Indulgence is granted on one day chosen by each of them during that month, on which day they shall have truly repented, confessed, and received Holy Communion, and visited a church or public oratory, and there, for some time, shall have offered

Translated by churchlatin.ai, a product of Boyne Archives

devout prayers to God, according to the intention of His Holiness; this is granted, with the faculty of applying these Indulgences for the souls detained in Purgatory." This decree is valid from now on, perpetually, without any time limit. In contradiction to anything to the contrary notwithstanding."

"Given at Rome, from the Secretariat of the Sacred Congregation for Indulgences and for Holy Relics, on the 8th of May, 1873."

L. Card. BARILI, Prefect.

Dominicus Sarra, Substitute.

[*Latin ed. p. 313*]

FROM THE HOLY CONGREGATION CONCERNED WITH THE COUNCIL OF TRENT: DOUBTS REGARDING THE GRANTING OF MARRIAGE DISPENSATIONS WHERE IMPEDIMENTS EXIST. Dated April 29, 1873. Summary of the case. Our Most Holy Lord, having suppressed the Legation of Sicily, the Monarchy's Judge, as they say, and its Tribunal, through Supreme Apostolic Letters, published on February 5th, 1864, and again on October 10th, 1867, granted Apostolic Letters to many, in which, desiring to promote the benefit and welfare of the people of Siculorum, He granted certain faculties to Bishops, among which are these: § 1 4: "Desirous of promoting the benefit and welfare of the people of Siculorum, We grant to all and each Archbishops, Bishops, and other Ordinaries and canonically elected Capitular Vicars of any diocese in Sicily, a special faculty to grant marriage dispensations in the third and fourth degrees of consanguinity and affinity, whether simple or double, and also mixed, provided that it does not involve the first degree, and provided that there is a canonical reason, and that the dispensation is granted entirely gratuitously, without any payment whatsoever, and only for the benefit of those who are truly poor. We wish and command, however, that in granting each dispensation, express mention be made of this special Apostolic faculty. And We also wish that this faculty, granted by Us regarding the aforementioned marriage dispensations, be understood by all in such a way that no one may ever interpret it as an impediment, so that the faithful of Siculorum..."

[*Latin ed. p. 314*]

"If it pleases them, these suppliants may directly petition this Apostolic See to obtain the same dispensations." Several doubts arose from this, on the part of the prelates of the Siculi, which the Holy Penitentiary Apostolic referred to the Holy Congregation of the Council, adding another doubt concerning the faculties of the Holy Penitentiary itself. The doubts, which concern the faculties of the Ordinaries in Sicily, are as follows: "1. Whether the Bishops of Sicily are able to grant dispensations in the third or fourth degree of consanguinity or affinity, that is, originating from a

Translated by churchlatin.ai, a product of Boyne Archives

triple root. 2. Whether the same Ordinaries are able to grant dispensations when consanguinity or affinity is found in the third or fourth degree, double, that is, originating from a double root, and at the same time another mixed degree is present, for example, from the third and fourth, originating from a third root. 3. Whether those who are not poor can validly obtain dispensations from them. 4. Whether the dispensations granted to those who falsely alleged poverty are valid." On this occasion, the Holy Penitentiary added: "Since it has the faculty of granting dispensations in cases in which true poverty of the Orators is present, and is to be verified by authentic testimony of the Ordinaries," it inquired: "Whether the dispensations granted by the Holy Penitentiary, with the 'preceding testimony of the poverty of the Orators given by the Ordinaries, would be valid, when 'that poverty is falsely presented.'" 1. A synoptical discussion. Generally, it was remembered that, in the early centuries of the Church, no dispensation was usually granted from matrimonial impediments. "No dispensation," says Christianus Lupus, "even royal or Augusta, was granted, although in the sixth or seventh degree of affinity." A similar question had already been pending before the Holy Congregation in the case of Granaten, proposed on April 18, 1863.

[*Latin ed. p. 315*]

Question 315: Marriages contracted either out of ignorance or without due consideration of the degree of relationship were, to a great extent, dispensed with; but all were resolved according to the force of the canons. Some hold that Innocent III, in the twelfth century, dispensed with a marriage between King Othone IV and a woman related to him in the fifth degree of consanguinity, and that this was done for a very important reason, namely, that two large monasteries might be founded, that all imperial lands might be dedicated to alms, and that fervent prayers might compensate for this wound to ecclesiastical discipline; Christianus Lupus, ad can. 2, Conc. Rem., page 3. However, it should be noted that there are other authors who find examples of dispensations long before that time, and they cite St. Gregory the Great, who, at the end of the fourth century, at the request of St. Augustine, the Apostle of Angliae, granted to the English, recently converted to the faith, permission to remain in marriages which they had contracted before their conversion, even though they were related in the third degree of consanguinity, Epist. 64, lib. 11. Indeed, the Church has generally been accustomed to act with greater leniency over time, but the Council of Trident, session 24, chapter 5, concerning marriages, decreed: "In contracting marriages, either no dispensation whatsoever shall be granted, or it shall be granted rarely." Whoever keeps this intention of the Church before his eyes would not so easily relax the reins in granting matrimonial dispensations.

WHAT HAS BEEN OBSERVED REGARDING THE FIRST AND SEC-

Translated by churchlatin.ai, a product of Boyne Archives

OND QUESTIONS FOR THE BISHOPS OF SICILY. Approaching the matter more closely, the Doctors generally speaking on this subject of dispensations (Sánchez de Matr. I. 8, disp. 2; De Iustis de Dispens. matr. I. i, c. 2, n. 1 seqq.; Pyrrhus Corradus in Praxi dispens. apost. I. i, c. i, and others commonly) make a significant distinction between the power granted to someone to grant a dispensation, and the dispensation itself. For the former should be interpreted broadly and extended to those cases which, although not expressly mentioned in the granting of the dispensation, can nevertheless be accommodated in some way, even if only as accessory matters, as the words themselves teach, according to De Iustis, in the aforementioned passage.

[*Latin ed. p. 316*]

Doubt 316 must be understood strictly. The reason why the power to dispense differs from a dispensation is that the authors repeat that the power to dispense belongs only to him who grants it, and therefore, since it is a benefit granted by the Prince beyond the law, and which causes no prejudice to any third party, it must be interpreted broadly in those matters which concern the prejudice of the one granting it: because in such a general granting of power, the principal motive of the Prince is not the dispensation itself, nor regard for the persons to be dispensed, but the favor with which he honors those who will dispense through the communication of his power, and for this reason he does not directly intend to violate the common law, nor to cause prejudice or harm to any third party. But the dispensation itself, since it exceeds the common law and violates it, is said to be odious, sterile, and unfruitful, and therefore must be strictly restricted and interpreted. Thus, the authors speak, considering the power to dispense in itself. From this doctrine, it follows that "just as, in a doubt as to whether a dispensation extends to a certain case, it must be interpreted as not extending; so conversely, in a doubt as to whether the power to dispense extends, so that by virtue of that power it can dispense in a certain case, it must be interpreted as extending." Sánchez, loc. cit., n.g; De Iustis, loc. cit., c. 2, n. 3. Applying this doctrine to matrimonial matters, they infer (although not all) that he to whom the power to dispense has been granted in a certain determined degree, e.g., in the second or third degree of consanguinity or affinity, can dispense even if it is a duplicate, since the power to dispense always pertains to the second or third degree, and does not go beyond the second or third. Sánchez, loc. cit., disp. 24, n. p and io; De Iustis, loc. cit., n. 8. Therefore, when the Ordinary of Sicily has been granted the power to dispense in the third and fourth degrees of consanguinity and affinity, whether simple or duplicate, it does not seem that they are denied the power to dispense from the same impediments and in the same degrees, when they arise from a triplicate cause. For it always

Translated by churchlatin.ai, a product of Boyne Archives

remains true that...

[*Latin ed. p. 317*]

Query 317: Dispensation in the third and fourth degrees of consanguinity and affinity. It must be understood strictly that the faculty of dispensing is to be understood against the alleged interpretations of the sacred canons. FROM WHAT IS RAISED IN OPPOSITION. Having omitted the previously explained principle, it is noted that, in interpreting such concessions, the best rule is that the intention of the grantor must be implied. Indeed, the Supreme Pontiff, in granting this power, had before his eyes not the favor of the Ordinaries, but the faithful of Siculorum, as the Apostolic Letters declare: "Since, with the greatest charity, we ought to favor the people of Sicily, who, having been raised up by ancestral religion and piety, with unwavering faith and obedience, steadfastly adhere to Us and to this Apostolic See, we do not omit, in other of Our Apostolic Letters, to provide for the needs and expenses of those faithful, granting suitable faculties to the Venerable Brothers, the Sacred Prelates in Sicily, to whom those same faithful will be able to more easily have recourse," thus in the aforementioned Supreme Letters, §. Furthermore, the Pontiff, in the aforementioned Letters, made a very serious statement, with the words that I have quoted: "Desirous of promoting the benefit and advantage of the people of Siculorum, We grant to all and each Archbishop, etc." Therefore, since, according to the clear intention of the Supreme Pontiff, such faculties have been granted in favor of the faithful of Siculorum, the intimate reason for which the alleged rule about broadly interpreting faculties is commonly taught, is lacking in this matter. For that rule is based on the reason that the Prince, in granting the faculty of dispensation, does not have regard for the persons to be dispensed, but intends to show favor and honor to the person being dispensed. Therefore, that rule cannot be applied to our present controversy. Another rule is applicable to the matter, as stated by Claudius La Croix, volume 2, I, 6, page 3, n. 863, in Moral Theology, where, speaking of a similar faculty of dispensing from matrimonial impediments, granted to the Bishops of Germany, every five years, he states: "Since this faculty is not granted by common law,..."

[*Latin ed. p. 318*]

"Doubt 318: 'Neither is it granted by ancient constitutions, but by a special one, which requires renewal every five years among the Bishops; it cannot be considered greater or other than what the Holy See intends to grant here and now, and it is also up to it to interpret its own intention if a doubt arises.' Furthermore, this rule most strictly applies to the controversy we are discussing; for the matter concerns a special faculty not granted by common law nor by ancient constitutions. 'We grant a special faculty,' says the Pontiff; 'nor is it perpetual, but limited to ten years; therefore, it

Translated by churchlatin.ai, a product of Boyne Archives

is not to be extended.' But moreover, no indulgence should be given to interpretation when the words of the concession are clear; and the Pontiff has made his intention clear with explicit words: 'We grant a special faculty for dispensing in marriages of double consanguinity in the fourth degree, and also for dispensations and mixed degrees of affinity, provided that it does not extend to the first or third simple degree.' The faculty, being so precisely determined and circumscribed, should not give rise to doubt; on the contrary, doubt could arise if the Pontiff had granted to the Sicilian Ordinaries the faculty of dispensing in the third and fourth degrees of consanguinity and affinity in general, without explaining whether those degrees should be simple or double, or even triple. Then, in that general concession, it could be said that all impediments contained within the third and fourth degrees of consanguinity or affinity are included, perhaps invoking the rule of widely interpreting faculties for useful support. Since, therefore, the Pontiff has specifically declared that he is granting the faculty of dispensing from those degrees, whether they are simple or double; it must be said that he has included the double degrees, and excluded the triple ones. For the inclusion of one implies the exclusion of the other. Especially since we are dealing with a faculty of dispensing in impediments to marriage; for such grants of faculty, unless made with explicit words, are not easily presumed."

[*Latin ed. p. 319*]

Doubt 319. Indeed, that which makes it more difficult for the Pontiff to grant a dispensation, also makes it more difficult to grant the faculty to dispense; for by the faculty to dispense, the Pontiff acts through others. But when more impediments are present, whether they are of different kinds, or even of the same kind, yet remaining from a different root, it is often more difficult for the Pontiff to grant a dispensation, because more impediments taken together present a greater degree of indecency and repugnance to the contracting of marriage, than if only individual impediments were to be dispensed with, as De Iustis rightly observes concerning dispensations, *de mat.*, chap. 4, n. 78 and following. Therefore, it must be said that it is more difficult to grant the faculty to dispense in the case of this multiple kind of impediment; and therefore, such a faculty should not be presumed. With these considerations in mind, it seems that the same thing must be said about the faculty to dispense, as is said about the dispensation itself. But it is certain that a dispensation granted concerning a particular impediment cannot suffice for another impediment, nor can its extension be given, as De Luca teaches in *de iure patron.*, disp. 38, n. u, even if it concerns the same kind of impediment, e.g., concerning consanguinity. For if this arises not from one, but from multiple grounds, and a dispensation is granted only in one, the marriage will be null, as is evident from the Apostolic Letters of Benedict XIV, *Etsi matrimonialis*, dated September

Translated by churchlatin.ai, a product of Boyne Archives

30, 1755, in which it was declared that a marriage contracted by a dispensation from the third and fourth degrees of simple consanguinity is null, because it was later discovered that the contracting parties were bound by a double impediment of this kind, and not a simple one. Therefore, a faculty to dispense granted concerning a precisely determined impediment cannot be extended to another, even if of the same species.

REGARDING THE THIRD AND FOURTH DOUBT, it has been observed in favor of the affirmative opinion that the Holy See, when it has endowed Sicilian Bishops with the faculty to dispense in favor of the poor, has left it to their judgment and conscience to determine who are truly poor, and therefore they can, through error, dispense for those who are not truly poor.

[*Latin ed. p. 320*]

320 Some may doubt that such cases truly exist. Indeed, in the case of Gobat, as mentioned by La Croix in book 6, page 3, paragraph 843, it is stated that such a dispensation can be valid, because if the Bishop believes this to be so, he prudently exercises the faculty granted to him. But furthermore, the distinction between the motivating cause and the final cause is important for the validity of dispensations: it must be observed that the truth of the matter concerning the final cause must be considered, so that the dispensation granted thereby is valid; moreover, poverty does not seem to be the final cause, but only a motivating one; for it is said that the Pope, moved to grant the faculty to the Sicilian Bishops to dispense with the poor, added the condition that a canonical cause must be present. Therefore, whenever such a cause is present, even if poverty is absent, the dispensation does not seem to be rendered null and void. BUT, it is observed that such a faculty was not granted under the condition that the petitioners are judged to be poor by prudent judgment, but under the condition that they are truly poor, as La Croix rightly points out in the aforementioned passage. The matter at hand concerns a delegated power, which cannot extend beyond expressly defined limits. Reiffenstuel, in the Appendix on dispensations concerning impediments, § 3, paragraph 25, speaking of the faculty granted to German Bishops to dispense in the third and fourth degrees of consanguinity and affinity only with the poor, writes: "These dispensations can be given for the poor alone, because privileges are only valid to the extent that they are expressed; this is the argument of chapter Recessus, concerning Privileges." To this, we add the teaching of Corradi in the aforementioned passage, I, 13, chapter 3, paragraph 6, who, along with others, states that in Apostolic Letters, there must be no clauses or words that are frustrating, and not even a word without force: that words have only the force to limit, restrict, and exclude. And not only this, but in the case of petitions for inheritance, the same applies. But when the Pope granted the aforementioned faculty to the Sicilian Bishops, He added a clause that it should be used only with truly poor people, and He added

Translated by churchlatin.ai, a product of Boyne Archives

the words: "only for the benefit of those who are truly poor"; therefore, He excluded all others. The same must be said of the words "truly poor."

[*Latin ed. p. 321*]

Question 321. After these matters were discussed, a question concerning the fifth doubt proposed by the Sacred Penitentiary was raised; but since the Sacred Congregation has postponed its resolution, I will report on it after it has been resolved.

Doubts:

I. "Can the Bishops of Sicily grant dispensations in the third or Quarten degree of consanguinity or affinity, that is, proceeding from a triple root in Kosso?"

II. "Can the same Ordinaries grant dispensations when consanguinity or affinity is found in the third or Quarten degree, and at the same time another mixed degree from the third and Quarten concur, that is, proceeding from the third root in Kosso?"

III. "Can those who are not poor validly obtain a dispensation from them in this case?"

IV. "Can those who falsely alleged poverty in this case validly obtain a dispensation?"

RESOLUTION. The Sacred Congregation, having knowledge of the cause in the meetings held on April 26, 1873, decided to respond: To I, II, III, and IV, negatively.

FROM WHICH WE GATHER:

I. The faculty of dispensing from the law is not considered odious in the Legislator; for he has the same right to it as he has to make the law: and therefore, he does not possess this faculty, as others do.

1. St. Thomas, I/I, 96, article 6, says: "Because the legislator cannot consider all individual cases, he proposes a law according to what happens in most cases, intending his intention for the common good." And ibid., ad 3, he continues: "No man's wisdom is so great that he can devise all individual cases; and therefore, he cannot sufficiently express in his words those things that are suitable to the intended end. And if the legislator could consider all cases, it would not be necessary for him to express them all."

Acla, vol. VII, page 78, 21.

[*Latin ed. p. 322*]

322. A doubt arises: whether the power to dispense from a law, delegated by the legislator, is inherently odious, since it does not alter the nature of the law itself. II. However, the power to dispense, granted by the legislator,

Translated by churchlatin.ai, a product of Boyne Archives

can be more or less odious, depending on whether it is clear that the legislator's intention is to be constrained by the words in which the power is expressed, and not to exceed prescribed limits. This is necessary to avoid confusion; but the law should be interpreted according to those things which happen in the majority of cases." And ibid., q. 97, art. 4, ad 1, it is added: "It sometimes happens that a certain precept, which is for the good of the multitude, is not suitable for this person or in this case; because either by this, some better good would be hindered, or even some evil would be introduced. It would be dangerous to commit this judgment to anyone's discretion; unless, perhaps, due to an obvious and imminent danger. And therefore, he who has the authority to govern the multitude has the power to dispense from human law, which is subject to his authority, so that he may grant permission to those persons or in those cases in which the law is deficient, that the precept of the law may not be observed. But if he grants permission without this reason, merely out of his own will, he will not be faithful in the dispensation, or he will be imprudent; unfaithful, if he does not have the intention of promoting the common good; imprudent, if he is ignorant of the reason for dispensing. And ibid., ad 1: "When a dispensation is granted to someone so that he does not observe the common law, it should not be done in disregard of the judgment of the common good; but with the intention of promoting the common good." From these things it is apparent that, just as the legislator is bound to enact laws for the common good, so too he is bound, by the very concept of human law, to grant dispensations according to the circumstances and persons, for the sake of that same common good. Therefore, the power to dispense, considered in itself, is not only not odious, but is necessary for the legislator, and he has the same right to it as he has to enact laws. Moreover, when this power is delegated to another, it does not alter the nature of the law; therefore, it is not inherently odious; indeed, even the delegation of the power to dispense itself is not odious, since the legislator cannot, by himself, dispense in all cases that may arise. But the legislator himself can make the power to dispense delegated to another more or less odious, by limiting it in various ways, as I have said above, from which arises a more or less strict interpretation of the power granted: and this also for the sake of the common good, because, as the Angelic Doctor says, it would be dangerous to commit this (that is, the power to dispense) to anyone's judgment, unless perhaps due to an obvious and imminent danger. Therefore, according to the reason of persons, or their suitability, or according to the reason of the cause, or of a matter of greater or lesser importance, the powers that the Roman Pontiff grants are more or less limited: and according to the mind of the Roman Pontiff, whether it results from law or from authentic declarations, the interpretation is to be made. From these things it also follows that the exercise of a delegated power within prescribed limits is not odious when just causes for dispensing are present: for when such

Translated by churchlatin.ai, a product of Boyne Archives

causes are present, the dispensation is not only not odious, but is...

[*Latin ed. p. 323*]

Doubt 323 III. This can be demonstrated in many ways: a) intrinsically, through the explicit words of the legislator expressed in the granting of a dispensation, or from the manner in which the legislator grants the dispensation by accurately limiting it, or from the purpose or motive of the granted dispensation, or from the gravity of the matter in question and other circumstances; b) extrinsically, through sacred canons or the practice of the Church, which can truly be said to give meaning to the violation of a law; since the legislator would not have enacted the law if just causes, such as those which serve the public good, or even the private good of souls, were not present, since the good of souls ultimately pertains to the public good; indeed, the good of the Church is directed solely towards the good of individual souls. Moreover, it can be a just cause for granting a dispensation, such that the dispensation is due, in cases where the proper reason for the law ceases to exist, or where something evidently dishonest or harmful would result from observing the law in a particular case. In such a case, it would be a formal violation of the law if the causes for the dispensation were not just or not sufficient, according to the judgment of a virtuous man or the common estimation; and therefore, the exercise of such a dispensation would then be considered odious, or even easily illicit for those lower than the legislator; and therefore, the dispensation granted would be subject to a strict, or even the strictest, interpretation. I said "easily illicit for those lower than the legislator," not because the legislator himself cannot illicitly grant a dispensation, since, as St. Thomas says, if he grants permission solely out of his own will, he will not be faithful in the dispensation, or he will be imprudent; but because the legislator may have certain higher and more universal considerations for the common good, which a lower dispenser cannot have. These considerations pertain to the dispensation in general, as considered in ecclesiastical laws concerning dispensations. But there are certain ecclesiastical laws designed to directly and immediately protect natural law, such as, for example, the laws concerning impediments to marriage based on consanguinity and affinity, which are established by the Church to safeguard the public and natural sanctity of marriage. Such laws, to some extent, derive their strength from the common estimation of people, and also from the very natural law which they immediately protect. Therefore, in ancient times, when the sanctity of marriage was held in greater honor in society, dispensations were rarely granted, even in minor impediments. In order that such laws may persist firmly, it was also established (in imitation of the strict law of nature, which applies in some impediments to marriage), that whoever acted contrary to it would effect nothing: that is, the marriage would be not only illicit, but also null. Later, however, when the sanctity of marriage was not held in such high

Translated by churchlatin.ai, a product of Boyne Archives

honor in society as it once was, dispensations were granted and are granted more easily, even in cases of canonical impediments. Nevertheless, it remained firm that nothing would be considered dispensed unless it was expressly stated in the dispensation; so that, although the most just causes for a dispensation may exist, which may extend to a greater reason than the impediment of lesser importance, than that over which the dispensation was granted.

[*Latin ed. p. 324*]

324. Doubts concerning a faculty granted, whether expressly or implicitly, must be resolved. IV. Considering the manner in which the Roman Pontiff limited the faculty granted to the Bishops of Sicily, considering the end for which it was granted, and also considering the long-standing practice within the Church in interpreting similar faculties granted to Bishops for matrimonial dispensations, it is clear that the intention of the Supreme Pontiff is that the words by which the faculty is expressed should remain within their limits, and that the prescribed boundaries should not be exceeded. V. Finally, it must be understood that a dispensation granted for one impediment does not apply to another, even if it is of the same species. Therefore, if a dispensation is expressly granted for one impediment, it is not considered to be a dispensation for another, and the marriage remains null. This is also very important for the public good, to avoid confusion, so that it may be certain whether a marriage is valid or invalid by reason of a dispensation. Since such laws also derive their force from natural law, which protects immediately and directly, it must be said that not only is a scandalous dispensation objectionable, but also the exercise of the faculty to grant dispensations is objectionable, since it is of the utmost importance to the legislator that the public sanctity of marriage be, as far as possible, protected by the most stringent laws. Indeed, the exercise of such a faculty was once so objectionable that, if it happened to be necessary to grant a dispensation for very serious reasons with the wealthy, very heavy burdens were imposed to compensate for the harm inflicted on the law, and to deter others from seeking such dispensations. Hence the origin of *Componenda* (a tax), which is found in the Apostolic Datary, or the register of heavy taxes. See Appendix XIII in Volume I, page 382 and following. Furthermore, in order to help the poor, a special dispensation was introduced, which was called the *forma pauperum*, which was only valid for reasons of infamy. See what I have written in Volume I, page 445. Here seems to be a general legal concept concerning laws and matrimonial dispensations, although the practice that has long prevailed, due to the conditions of society, no longer fully conforms to this concept; and there are impediments to marriage that, since they are easily and widely dispensed with, perhaps it would be advisable to abolish in the new law on matrimonial matters. Concerning the customary canonical causes that are considered sufficient

Translated by churchlatin.ai, a product of Boyne Archives

for granting a dispensation, see Appendix III in Volume III, page 62 and following.

[*Latin ed. p. 325*]

Appendix VI 325 APPENDIX VI. Concerning particular and extraordinary faculties, which are granted by the Holy Congregation for the Propagation of the Faith, according to the circumstances of the missions. In the Apostolic letters by which the Apostolic Vicariate was established for the missions of Central Africa, pages 22 and 23, I indicated that I would relate the faculties granted to the new Apostolic Pro-Vicar established in those missions, since knowledge of these extraordinary faculties also sheds light on canonical jurisprudence. Taking advantage of this opportunity arising from the preceding matter, I present them here. The following faculties were granted to the Most Reverend Daniel Comboni, Apostolic Pro-Vicar of Africa: some were printed, which are commonly granted for various mission territories, such as for North and South America, for China, etc., and were inscribed with "F. I," that is, the first formula, which contains, above all other formulas of this kind, broader faculties. Others were written by hand, and therefore are entirely extraordinary. The first formula of faculties is as follows:

"1. To confer the Orders of the priesthood outside of the proper times and without observing the prescribed intervals, up to and including the priesthood, if there is a need of priests there.

2. To grant dispensations in any irregularities, except those arising from true bigamy or from voluntary homicide; and even in these two cases, if there is a pressing need of workers there, provided that, with regard to voluntary homicide, no scandal arises from such a dispensation.

3. To grant dispensations regarding the age of one year due to a lack of workers, so that they may be promoted to the priesthood, if otherwise they are suitable.

4. To grant dispensations and to change simple vows to other pious works, and to grant dispensations for a reasonable cause in simple vows of chastity and religious life.

5. To absolve and to grant dispensations in any case of simony: and in actual cases, after the benefits have been relinquished, to impose some alms or salutary penance at the discretion of the one granting the dispensation, or even while retaining the benefits, if they are parochial and there are no ones who can be appointed as pastors of the parishes.

6. To grant dispensations in the third and fourth degrees of consanguinity and affinity, in simple and mixed cases, and in the second, third, and fourth mixed cases, but not in the second alone with regard to future mar-

Translated by churchlatin.ai, a product of Boyne Archives

riages; however, with regard to past marriages, even in the second degree."

[*Latin ed. p. 326*]

Appendix 326. VI. Only, provided that in no way does it reach the first grade, concerning those who are converted from heresy or infidelity to the Catholic faith, and in these cases, declaring the offspring conceived to be legitimate.

7. Dispensing with the impediment of public dishonor arising from betrothals.

8. Dispensing with the impediment of a crime, provided that neither spouse is scheming, and restoring the right to demand what is due.

9. Dispensing with the impediment of spiritual consanguinity, except between godfather and godchild.

10. These dispensations for marriage, namely 6, 7, 8, and 9, shall not be granted unless with the clause: provided that the woman has not been abducted, or if she has been abducted, she is not in the power of the abductor: and in the dispensation, the wording of such permissions shall be inserted, with the expression of the time for which they have been granted.

11. Dispensing with those who have multiple wives among the Gentiles and the infidels, so that after conversion and baptism, they may retain whichever of them they prefer, if even she becomes faithful, unless the first one wishes to convert.

12. Preparing the sacred oils with priests, whom they may have; and if necessity arises, even outside the day of the Lord's Supper.

13. Delegating to simple priests the power to bless vestments and other items necessary for the Sacrifice of the Mass, where there is no sacred unction; and to reconcile churches polluted with water blessed by the Bishop; and in case of necessity, even with water not blessed by the Bishop.

14. Granting a plenary Indulgence three times a year to the contrite, who have confessed and received Holy Communion.

15. Absolving from heresy and apostasy from the faith and from schism, anyone, even ecclesiastical persons, both secular and regular; however, not those who have come from places where the Holy Office is exercised, unless in mission territories, in which they have committed offenses while heresy is openly rampant; nor those who have formally abjured, unless these were born in places where heresy is openly rampant, and after a formal abjuration, they have returned there and relapsed into heresy; and these only in foro conscientiae [in the court of conscience].

16. Absolving from all censures, even in a special manner, according to the moderation of the Apostolic See in the Bull of October 12, 1869, reserved to the Roman Pontiff, except for the absolution of an accomplice in a heinous sin.

17. Granting a plenary Indulgence to those newly converted from heresy,

Translated by churchlatin.ai, a product of Boyne Archives

and also to any faithful persons who are at the point of death, if they are contrite, even if they are unable to confess.

18. Granting a plenary Indulgence in prayer for 40 hours three times a year, on days approved by the Bishop, to the contrite and confessed, who have received Holy Communion, provided that, due to the presence of the people and the exposition of the Most Holy Sacrament, there is no probable suspicion of sacrilege by heretics and infidels, or offense by magistrates.

[*Latin ed. p. 327*]

Appendix 327 VI 19. To obtain these same Indulgences for themselves. 20. On each of the second feria days not impeded by office, or if impeded, on the immediately following day, to celebrate Mass for the repose of the dead at any altar, even a portable one, to release the souls, according to their intention, from the pains of purgatory by way of suffrage. 21. To keep and read, but not to grant to others, except, for a time, to those Priests whom they know to be especially suitable and honest, prohibited books, with the exception of the works of Dupuy, Volney, M. Reghellini, Pigault, le Brun, De Potter, Bontham, J. A. Delaure, *Fêtes et Courtisanes de la Grece*, *Novelle di Casti*, and other works that treat of obscene matters and against Religion expressly. 22. To appoint religious as pastors of parishes, and to assign vicars to them in the absence of secular priests, with the consent of their superiors. 23. To celebrate Mass twice in a day, if necessity demands it (provided that in the first Mass he does not take the ablutions), once before dawn and once after midday, without a minister, and outdoors or underground, in a decent place, even if the altar is broken or without relics of the Saints, and in the presence of heretics, schismatics, infidels, and excommunicated persons, if it cannot be celebrated otherwise. However, he must take care not to use this faculty or dispensation to celebrate Mass twice in a day except for very serious reasons and very rarely, in which case his conscience is heavily burdened. Furthermore, if he is to communicate this same faculty to another Priest, or to approve the reasons for its use to someone who has obtained this faculty from the Holy See, his conscience is seriously enjoined to grant it only to a few, those of mature prudence and zeal, and who are absolutely necessary, and not for any place, but where a serious necessity demands it, and to grant it for a short time, or to approve the reasons for it with due consideration. 24. To carry the Most Holy Sacrament secretly to the sick without a light, and to retain it for those same sick, in a decent place, if there is danger of sacrilege from heretics or infidels. 25. To wear secular clothing, if otherwise they will not be able to go to or remain in the places entrusted to their care. 26. To recite the Rosary or other prayers, if they are unable to carry the breviary with them, or if they are unable to recite the Divine Office for some legitimate reason. 27. To grant a dispensation, when it seems expedient, regarding the eating of meat, eggs, and dairy products during times of fasting and Lent.

Translated by churchlatin.ai, a product of Boyne Archives

28. To communicate these faculties, but not those that require episcopal ordination, or not without the use of the sacred oils.

*Regarding this article, you have a recent Instruction from the Sacred Congregation of Propaganda Fide in volume VI, pages 545 and following.

[*Latin ed. p. 328*]

Appendix 328 VI. These faculties are exercised by suitable priests, who will labor in their dioceses, and especially at the time of the bishop's death, so that when the see is vacant, there may be someone who can provide a replacement, until the Apostolic See is made certain, which must be done as soon as possible through delegates or through one of them, in such a way that provision is made otherwise: to these delegates, by apostolic authority, the faculty is granted, when the see is vacant and in cases of necessity, to consecrate chalices, patens, and portable altars with sacred oils, which oils, however, must be blessed by the Bishop. 29. And these aforementioned faculties are to be exercised freely and without any remuneration, and they are to be understood as granted only to the extent specified, and they cannot be used outside the boundaries of their own diocese. From an audience of the Holy Father, on June 16, 1872. The Most Holy Father, Pope Pius IX, by divine providence, having been informed by the undersigned Secretary of the Sacred Congregation for the Propagation of the Faith, the Reverend Father Daniel Comboni, Apostolic Pro-Prefect of Central Africa, graciously granted these faculties, with the exception of those that require the episcopal character, for a period of ten years. Given, etc.

BROADER EXTRAORDINARY FACULTIES. In addition to the aforementioned faculties, other faculties were granted to the same Apostolic Pro-Prefect in a handwritten document, which are of the following tenor: "The Most Holy Father, Pope Pius IX, by divine providence, having been informed by the undersigned Secretary, the Reverend Father Daniel Comboni, Apostolic Pro-Prefect of the Missions of Central Africa, graciously granted the following faculties for a period of ten years:

1. To grant dispensations to Catholics subject to his spiritual jurisdiction, regarding disparity of cult, but only for serious reasons in each individual case in which a dispensation is required, so that, as far as possible without offending the Creator, those contracting the marriage may freely and lawfully remain together afterward, and the child conceived or to be conceived is declared legitimate.

2. To grant dispensations to the same, in the second degree of consanguinity and affinity, provided that in no way does it affect the first degree in marriages already contracted or to be contracted.

3. To grant dispensations to the aforementioned regarding the impediment of spiritual kinship between the godfather and the godchild.

4. To grant dispensations to the same Catholics regarding the impedi-

Translated by churchlatin.ai, a product of Boyne Archives

ment of the first degree of affinity arising from an illicit union, whether by collateral or direct line, provided that there is no doubt that one of the contracting parties may be the offspring of the other; and also regarding the impediment of the first and second, and the second degree only, of affinity arising from an illicit union in marriages, whether knowingly or unknowingly.

[*Latin ed. p. 329*]

Appendix VI 329. Even when contracted knowingly, as also in cases of impediment, where a reasonable and legitimate cause exists, in both public and private matters, salutary penances are imposed according to the manner of the fault.

« 5. Dispensations may be granted to the aforementioned Catholics, except for Italians, concerning those of whom it is not entirely certain that they have abandoned their Italian domicile, in matters of consanguinity and affinity, regarding which the Apostolic See has already granted the power to Catholics alone, even in mixed marriages already contracted, so that, after prior absolution from the sin of incest and censures, the Catholic party may lawfully contract marriage with the non-Catholic party, but privately, omitting proclamations outside the Church and without the blessing of the parish priest, and the children conceived being declared legitimate, provided that the danger of perversion from the Catholic side be removed, that the conversion of the non-Catholic party be diligently cared for, and that the children of both sexes be instructed in the Catholic religion.

« 6. Dispensations may be granted to the same Catholics, except for Italians, as in the preceding paragraph, so that they may lawfully contract marriage, privately, omitting proclamations outside the Church and without a blessing, between a Catholic and a non-Catholic, and vice versa, and if a marriage has already been contracted, it may lawfully remain, provided that the danger of perversion from the Catholic side be removed, that the conversion of the non-Catholic party be diligently cared for, and that the children of both sexes be instructed in the Catholic religion.

« 7. However, the aforementioned Pro-Vicar, as well as his secular and regular clergy, may recite the morning prayers with the praises of the following day privately, immediately after the two hours following midday.

« 8. Indulgences are granted to these individuals, as well as to their Missionaries, to recite, once a week, the Office of the Blessed Sacrament, the Feast of the Conception of the Blessed Virgin Mary, and the Feast of St. Francis Xavier, on days not impeded by the double office or the second class.

« 9. The right to retain and read books prohibited by the Apostolic See, even those acting against the Faith with the express purpose of impugning

Translated by churchlatin.ai, a product of Boyne Archives

it, is granted, provided that they are carefully guarded so that they do not fall into the hands of others, except for those that are expressly obscene; and the same faculty may be granted to others, but sparingly, and according to the prudence and judgment of the Pro-Vicar.

« 10. The right to celebrate Mass is granted, whenever necessity arises, two hours after midnight.

« 11. The right is granted to establish pious exercises of the Via Crucis in places subject to their spiritual jurisdiction, as well as all confraternities approved by this Holy See, with the application of all indulgences and privileges that the Supreme Pontiffs have granted to those performing the pious exercise of the Via Crucis and to confraternities.

11. Instructions on this matter have been given, which I presented in volume VI, pages 456 and following, which concerns mixed marriages.

[*Latin ed. p. 330*]

Appendix 330 VI « 12. To administer the Sacrament of Confirmation to those Catholics subject to his spiritual jurisdiction, using chrism consecrated by a Catholic Bishop, without pontifical insignia, and according to the norms of the Instruction issued by the Sacred Congregation on May 4, 1774. « 13. To consecrate chalices, patens, and altar stones, according to the form prescribed in the Roman Pontifical, using oil consecrated by a Catholic Bishop. « 14. To grant these faculties in whole or in part to priests residing within the area of his spiritual jurisdiction, as he may deem most expedient in the Lord, for a period of ten years, except for the faculty mentioned in number 12, which he may, if he wishes, limit to seven years. « Given in Rome, from the offices of the aforementioned Sacred Congregation, on the day and year mentioned above ». 1 APPENDIX VII. Instruction for a simple priest administering the Sacrament of Confirmation by delegation from the Holy See, issued in the year 1774. DECREE of the Sacred Congregation General for the Propagation of the Faith. March 21, 1774. Presented by the Reverend Father Stephen Borgia, Secretary, some Superiors of Missions, and others, to whom the Holy See grants the extraordinary faculty to administer the Sacrament of Confirmation, have sometimes used Episcopal vestments and ornaments in its administration: The Most Eminent Fathers declared, and declare by virtue of the present Decree, that it is not permitted to anyone who does not possess the Episcopal character, or to whom the use of pontifical vestments does not legitimately belong, to use the rochet, mitre, pastoral staff, ring, or pectoral cross in the administration of chrism; and they decreed that it should be requested from the Most Holy [Father] for the approval of this declaration, as well as for the preparation of an Instruction for simple priests administering Confirmation, as mentioned above. 1 I present such an Instruction, which is in full force, in the

Translated by churchlatin.ai, a product of Boyne Archives

following Appendix VII.

[*Latin ed. p. 331*]

Appendix • VII 331 The following was brought to the attention of His Most Holy Lord Pope Clement XIV by the aforementioned Secretary, in an audience on April 3rd of the current year, regarding the aforementioned sentence of the Sacred Congregation. His Holiness benignly approved it, and ordered that it be inviolably observed by all to whom it pertains. Given in Rome, from the offices of the aforementioned Sacred Congregation, on April 23, 1774. IOSEPH MARIA Cardinal CASTELLI, Prefect. Stephanus Borgia, Secretary. INSTRUCTION FOR A SIMPLE PRIEST REGARDING THE SACRAMENT OF CONFIRMATION, ADMINISTERED BY DELEGATION FROM THE APOSTOLIC SEE. Although, according to the definition of the Holy Council of Trent, only a Bishop is the ordinary minister of this Sacrament, nevertheless, for just causes, the Apostolic See sometimes grants a simple priest, as an extraordinary minister, the faculty to administer it. Therefore, the priest to whom this faculty has been granted, should first ensure that he has the Chrism prepared by a Catholic prelate in communion with the same Holy See, and he should know that it is never permissible for him to administer Confirmation without it, nor to receive it from heretical or schismatic bishops. Furthermore, he should note whether any other faculty is expressed in the grant given to him by the Apostolic See, such as the use of Chrism blessed before the year, and that he should not use it otherwise, unless perhaps in cases of necessity, when it is prohibited by the sacred canons. Although Confirmation can be administered at any time, it is nevertheless fitting that it be conferred especially during the week of Pentecost, and around the third hour, at which time the Holy Spirit descended upon the Apostles. Regarding the age of those to be confirmed, the following should be kept in mind from the Catechism of Rome, in these words: Observe... 1 1 4 6 7 1 Sess. 7, de Confirm. can. 3. Eugen. I V , in Decret, pro Armenis. 3 S. Thomas, 3rd part, question 72, article 3, in corp. 4 Bened. X I V , Constit. Anno vertente, Bull. Tom. 3, page 288. 5 Can Litteris de Consecr. dist. 3, and Can. 5z quis de alio de Consecr. dist. 4. Catech. Rom. de Sacram. Confirmat. S. Carolus in V. Synodo Mediolan, cap. de Confirm. 7 Loc. cit. 2 6

[*Latin ed. p. 332*]

Appendix 332 VII. While it is true that, after Baptism, the Sacrament of Confirmation can be administered to all, it is nevertheless more fitting that this be done after the child has attained the use of reason. Therefore, if the age of twelve seems too long to wait, it is certainly most fitting to postpone this Sacrament until the age of seven. This admonition, of course, applies to children who are in good health. For, if we are speaking of one who is suffering from a grave illness from which he is foreseen to die, it is not only

Translated by churchlatin.ai, a product of Boyne Archives

permissible, but even fitting, to administer the sacred chrism before the age of seven, so that, departing from this life, he may attain greater glory in heaven, according to the teaching of St. Thomas. Furthermore, according to the opinion of many theologians, there may be legitimate reasons for postponing the administration of this Sacrament until after the age of seven, especially when a prolonged absence of the Bishop or Priest is foreseen, to whom, as mentioned above, the faculty to administer it has been granted, or when some other urgent necessity arises. In order that those who are to be confirmed, having attained the use of reason, may worthily receive this Sacrament, they must be in the state of grace; therefore, it is very fitting that they should be preceded by the Sacramental Confession. For, if, conscious of some mortal sin, they were to approach Confirmation, they would not only fail to receive the grace of this Sacrament, but would also incur a most grievous sacrilege. According to the ancient practice of the Church, those who are to be confirmed should be fasting, and it is therefore desirable that this practice should also be observed. Before being united with the sacred chrism, they should be carefully instructed, according to the teachings of the Roman Catechism, concerning the nature, dignity, effects, and dispositions necessary for worthily receiving this Sacrament. Moreover, they should be instructed in the fundamentals of the Faith, the Decalogue, and the precepts of the Church, and they should have memorized the theological virtues, the Our Father, and the Apostles' Creed. Furthermore, missionaries should not fail to exhort the people entrusted to them to receive Confirmation in due time, nor should they neglect to urge parents to have their children confirmed; for although this Sacrament is not absolutely necessary for salvation, it cannot be refused without grave sin, and it should not be neglected when the opportunity arises for its reception. This teaching, which is true for all Christians everywhere, is all the more applicable to those who live in lands inhabited by heretics or pagans, in which places Confirmation was sometimes administered.

1. St. Thomas, 3 parts, question 73, article 8, ad 4.

2. Benedict XIV, in book 7, chapter 10, numbers 5, 6, 7, de Synodo Dioeces.

3. Instruction of the Most Reverend Vicar of the Sacred City for those who are about to receive this Sacrament, year 1773.

4. Roman Catechism on Confirmation.

5. Benedict XIV, in Constitution Etsi Pastoralis, § 3, number 4.

6. Bull. Tom. 1.

[*Latin ed. p. 333*]

Appendix VII 333. Persecutions against Catholics are increasing; therefore, it is necessary that they be strengthened with the sevenfold power of the Spirit, so that not only do they believe with their heart for justice,

Translated by churchlatin.ai, a product of Boyne Archives

but also they confess with their mouth for salvation, and that they show themselves ready to shed their blood for Christ. Since this Sacrament impresses an indelible character on the soul, it must not be repeated, and therefore, he who has been confirmed should not dare to approach it, just as neither should the excommunicated, the interdicted, those who communicate with heretics or schismatics, or those who practice idolatrous rites, or who publicly sin in any other way; nor should those who have not fulfilled the Paschal precept. Those who are to be confirmed should take care not to approach this Sacrament with a soiled face or tangled hair, but should be clothed in garments, as should the godparents, in simplicity and modesty. Women who are to receive this Sacrament, and who will exercise the office of godmother, should not present themselves in the Church with vain ornaments or a painted face, but with all modesty and reverence. If anyone among those to be confirmed has a shameful name, or one not fitting for a Christian, he should take another name at the time of Confirmation. Although it is not necessary for this Sacrament that a godfather or godmother be present in receiving it, yet the laudable custom of the Church suggests it, and the sacred canons prescribe it. From this office, however, are excluded both those under the age of fourteen, and those who have not yet received the Sacrament of Confirmation. 5. But since it may happen that in mission territories no one is present who has previously been confirmed, it is permitted in this case that some be confirmed without a godfather, who afterward may be godparents for others. With regard to such godparents, the following rules must also be observed: I. That not more than one, but only one, whether man or woman, be appointed as godfather or godmother. II. That neither men act as godmothers to women, nor women as godfathers to men, but that each person be assigned a godfather of his own sex. III. That, unless necessity compels it, the same person should not be the godfather for two Confirmations, but a different godfather should be chosen. IV. That excommunicated persons, the interdicted, public sinners, or those who have omitted the Paschal precept, be excluded from the office of godfather.

1 Concil. Aquense, anno 1585. Instructio supradicta.

2 Concil. Aquense, anno 1585, Concil. Tolosan. anno 1590, S. Carolus Borrom. in V. Synodo Mediolanen.

3 Sacramentar. S. Gregorii M. Ordo Romanus apud Hittorpium.

4 Instructio praedicta.

5 Can. In Baptismate, 102, de Consecrat, dist. 4.

6 Can. Non plures, 101, dist. 4.

7 Pontifie. Rom. Can. In Chatechismo, 100. de Consecrat, dist. 4.

Translated by churchlatin.ai, a product of Boyne Archives

8 Pontifie. Rom.

[*Latin ed. p. 334*]

Appendix 334 VII Concerning the spiritual bond which is contracted in this Sacrament, the Council of Trent decrees as follows: That bond, which is also contracted through Confirmation, between the one who confers Confirmation, the one who receives it, and that person's father and mother, and the godfather, shall not be dissolved, with all other impediments to this spiritual bond being entirely removed. This decree of the Council is applicable to those who are bound to observe the statutes of Trent. Others, however, conform to the discipline in force in their respective regions in this matter. When the time arrives for the priest, using the faculty granted to him by the Apostolic See, as mentioned above, to administer Confirmation, he, wearing priestly vestments, or at least the alb and stole, standing before the altar, facing the people arranged around him (men on the right, women on the left), briefly reminds them of the foregoing matters, and especially informs them that no one other than the ordinary minister, the Bishop, is the minister of Confirmation; and that he himself is prepared to confer it by virtue of the delegation granted to him by the Holy See. After the decree of delegation, or the Apostolic brief, has been read aloud in the vernacular, in a clear and understandable voice, he again reminds those present that no one who is to be confirmed shall depart without receiving the blessing, which he himself will give after the Confirmation of all. Furthermore, that if there are any infants who, for a just reason, are to be confirmed at an early age, they should be held in the arms of their godparents on the right side, and that adults should place their foot upon the right foot of their godfather. Having completed this second reminder, standing and facing those who are to be confirmed, with his hands joined before his chest, and with those who are to be confirmed kneeling, with their hands joined before their chests, he says: "May the Holy Spirit come upon you, and may the power of the Most High protect you from sin. Amen." Then, making the sign of the cross with his right hand, from his forehead to his chest, he says: "May our help be in the name of the Lord. Who made heaven and earth. O Lord, hear my prayer. And let my supplication come to you. The Lord be with you. And with your spirit." Then, with his hands extended towards those who are to be confirmed, he says: "LET US PRAY. Almighty and eternal God, who has deigned to regenerate these your servants through water and the Holy Spirit; and who has given them the remission of all sins; send down upon them the sevenfold Spirit of the Holy Paraclete from heaven. Amen." Session 24, on the Reform of Matrimony, chapter 2. Pontificale Romanum.

[*Latin ed. p. 335*]

Appendix VII 335 Spirit of Wisdom, and of Understanding. Amen. Spirit of Counsel, and of Fortitude. Amen. Spirit of Knowledge, and of Piety.

Translated by churchlatin.ai, a product of Boyne Archives

Amen. Fill them with the Spirit of your fear, and mark them with the sign of the Cross of Our Lord Jesus Christ, that they may go in the way of eternal salvation. Through the same Our Lord Jesus Christ, Your Son, who lives and reigns with You and the Holy Spirit, God, forever and ever. Amen. After these words, the Priest confers the Sacrament, kneeling first to the men, and then to the women. Once all have been conferred, they rise, and the others kneel, and are conferred, and so until the end. The Priest then asks individually of each one to be confirmed, presented to him kneeling by the Godfather or Godmother, and with the thumb of his right hand dipped in the sacred chrism, he says: N., in the sign of the Cross: and as he says this, he makes the sign of the Cross with his thumb upon the forehead of the one being confirmed, and then continues: and I confirm you with the chrism of salvation, in the name of the Father, and the Son, and the Holy Spirit. Amen. Then he gently strikes him on the cheek, saying: Peace be with you. It is customary to anoint the foreheads of those newly confirmed with a band of linen, according to the Roman Pontifical. However, since the public display of linen among the unfaithful could expose the Sacrament to ridicule, it is advisable, if this scandal is foreseen, not to use such linen; but in this case, it will be necessary for the Priest, after having anointed the foreheads of those being confirmed with the sacred chrism, to carefully wipe them with a cloth, and then wash them. After all have been confirmed, the Priest wipes with a sponge, and washes the thumb and hands over the basin: then water and bread are placed in the basin of the sacristy, where the ashes of the aforementioned cloths should also be placed. While washing his hands, if ministers are present, the following antiphon is sung, or read: otherwise, after the washing, it is said by the Priest himself: Confirm, O Lord, what You have accomplished in us in Your holy temple, which is in Jerusalem. Glory to the Father, etc. And the antiphon is repeated in the eighth tone: Confirm, O Lord, etc., and after it has been repeated, turning towards the altar, with his hands joined before his breast, he says: Show us, O Lord, Your mercy. And grant us Your salvation. O Lord, hear my prayer. And let my supplication come to You. The Lord be with you. And with your spirit.

1 2 1 Concerning those to be confirmed. * St. Charles Borromeo, in the aforementioned Council of Milan.

[*Latin ed. p. 336*]

Appendix 336 VII. And having joined his hands before his breast, and with all the Candidates kneeling reverently, he says: LET US PRAY. O God, who did give the Holy Spirit to your Apostles, and who willed that through them, and through their successors, it should be given to other faithful, look favorably upon the service of our humility, and grant that the hearts of those whose foreheads we have anointed with the Holy Chrism, and whom we have marked with the sign of the Holy Cross, may be perfected by the same Holy Spirit descending upon them, so that they may worthily

Translated by churchlatin.ai, a product of Boyne Archives

inhabit the temple of your glory: Who, with the Father and the same Holy Spirit, live and reign, God, forever and ever. Amen. Then he says: Behold, thus shall all who fear the Lord be blessed: and turning himself to the Candidates, and making over them the sign of the Cross, he also says: May the Lord bless you from Zion, that you may see the prosperity of Jerusalem all the days of your life, and may you have everlasting life. Amen. Having thus administered the Sacrament of Confirmation, the Priest, sitting, as mentioned in the Roman Pontifical, reminds the godparents that they should instruct their children in good morals, that they may avoid evil and do good, and if they were confirmed in their childhood, that they should teach them the Creed, the Our Father, and the Hail Mary, since they are obligated to do so. This Sacrament can be conferred less solemnly, and especially when, in private homes, or outside the Church, or chapel, children are sick, as mentioned above, or even adults, who cannot access the Church for any legitimate reason. In such cases, the Priest should not fail to wear at least a stole, if he cannot have a cope; he must also take care not to administer Confirmation before heretics or schismatics, and much less to those who minister to them. But if, by some chance, it should happen that, through the authority of the Apostolic See, someone is empowered to administer Confirmation in regions where Eastern Catholics, besides the Latins, reside, it will be necessary not only to observe the aforementioned diligently, but also, before administering this Sacrament to the Easterns themselves, to request instructions from the Apostolic See, so that he may know how he should conduct himself towards the Easterns of each rite. And in order to receive a suitable response as soon as possible, it is necessary to inform the Sacred Congregation for the Propagation of the Faith individually about the following: first, what rites are those of the Easterns; whether they have been confirmed by anyone, and by whom, that is, whether by their own Bishops, or by priests of their own nation; whether they spontaneously request to be confirmed.

[*Latin ed. p. 337*]

Appendix VII 337: Whether the faithful may conveniently receive the Sacrament of Confirmation from their own Bishops; and finally, whether the Sacrament of Confirmation should be administered in a diocese in which an Eastern Bishop actually resides, who is the ordinary minister for those to be confirmed. The instruction of the Sacred Congregation, concerning which the Most Holy Pope Clement XIV, through me, the undersigned Secretary of the same Sacred Congregation, was heard on the first of May of the current year, was benignly approved in all respects by His Holiness, and it was ordered that it be observed entirely. Given in Rome, from the offices of the Sacred Congregation, on the fourth of May, 1774. Stephanus Borgia, Secretary. FROM THE SACRED CONGREGATION OF RITES: Indult to celebrate the feast of Saint Eugene

Translated by churchlatin.ai, a product of Boyne Archives

III for all those who follow the Calendar of the Roman Clergy. ROMAN. DECREE. Having been approved by the Holy Apostolic See, the public ecclesiastical cult, by which the Blessed Pope Eugene III has, from time immemorial, been venerated, as well as the honor granted to him, namely, the Office and Mass of the Pontifical Confessor, with a proper prayer and historical readings for the second Nocturn, the undersigned Cardinal, Dean of the Sacred College, and the Most Holy Lord our Pope Pius IX, in the City, acting as his vicarious, humbly beseech the same Most Holy Lord, that He would deign to grant to the Roman Clergy and to all those who recite the sacred Offices according to the Secular Calendar of the City, an Indult to celebrate the feast of the Blessed Pope Eugene III on the eighth of July, with a lesser double rite, and with the aforementioned Office and Mass, the Office being celebrated on the same day, provided that... 1 *Causam de immemorabili cultu retuli pag. 97 et seqq.* In Appendix VIII which follows, you will find the Office and Mass. Acts, vol. VII, fol. LX XVIII. 22

[*Latin ed. p. 338*]

338 Rome is not of higher rank, and shall be free on the first day of each month that falls on a calendar day. Furthermore, having received the aforementioned petitions from the Secretary of the Sacred Congregation, and graciously approving them with prayers, His Holiness has deigned to grant them, notwithstanding any objections. April 24, 1873. C. Card. PATRIZI, Bishop of Ostia and Velletri, S.R.C., Prefect. D. Bartolini, S.R.C., Secretary. APPENDIX VIII. Office with Mass of Blessed Eugene III, approved by the S.R.C., for those who follow the Roman Calendar. Prayer. "We beseech you, Almighty God, through the intercession of your Blessed Eugene, your Confessor and Pope, that we may serve you with all our hearts: for no hostility will prevail against us, if we truly trust in you. Through our Lord." IN I. Nocturn: Readings from Scripture appropriate to the day. IN II. Nocturn, Lesson IV. Eugene, of this name, the third, formerly called Bernard, was a native of Pisa. Having completed his youth, he entered the clerical state, and after being initiated into the priesthood, he earned the right to be included among the Canons of the Metropolitan Church of Pisa, due to his excellent qualities of mind. Attracted by the example of Saint Bernard, who had then come to Pisa, he devoted himself to him, and put on the monastic habit in the valley of Clara. The discipline of this great man progressed so much that he was first appointed prefect of the monastery of Farfa, and then elected Abbot of the monastery of Saints Vincent and Anastasius at the Waters of Health by Pope Innocent II. In this office, he displayed a remarkable degree of sanctity and prudence.

[*Latin ed. p. 339*]

Appendix VIII - Having the splendor of the decrees of 339 having shone

Translated by churchlatin.ai, a product of Boyne Archives

forth, after the death of Lucius II, the Supreme Pontiff was elected by the Cardinals with all the votes. However, scarcely had his pontificate begun, when, with the tumult of traitors seeking to overthrow the principality of the Roman Church, he was forced to depart the city once and again; but after the tempest had been calmed, he returned to it again, with great honor, and with the congratulations of good men. I have found David. Lesson V. While residing in Viterbo, he received the legates from England, Scotland, Germany, Spain, and France, who, in his person, professed obedience and submission to Blessed Peter; and also several bishops from Armenia, who, moreover, inquired of him concerning the more serious affairs of the Eastern Church, in the name of their metropolitan and their people. He then departed for France, where he held the councils of Rheims and Treves, in which he condemned the errors of Eon and Gilbert of Porretan, and established other things prudently for the discipline of the clergy, and for the liberty of the Church. Afterwards, he visited the monasteries of Clervaux and Cîteaux, together with Saint Bernard, leaving behind everywhere excellent examples of holy conversation. From the same Bernard, he received salutary counsel concerning the administration of the Church, and the defense of the rights of the Apostolic See; and he, in turn, gave him a valuable book on Contemplation, in which the prerogatives and duties of the Pope and Prince are explained with heavenly wisdom. Also, an outstanding cultivator of letters, he reformed the studies of theology and jurisprudence, and established academic institutions, as they are called, in order to make the minds of young men more eager. I have placed my help. Lesson VI. With a singular desire for fostering peace, he devoted all his efforts to reconciling the discord between the people of Pisa and those of Lugo. He loved the beauty of the House of God above all things: for he adorned the Basilica of Liberius with more beautiful ornaments, and he either restored or enriched with precious gifts many other temples; and to the Basilica of the Vatican, he gave one-fourth of the offerings that were due to him by custom, in addition to the tithe that had already been attributed to the Prince of the Apostles by Saint Leo IX. He enrolled Henry, the Emperor, a noble example of Catholic princes, among the Saints. Finally, at Tibur, which he had left in order to avoid the summer heat, he was struck by a grave illness and met his death on the eighth of July, in the year one thousand five hundred and fifty-three, after having sat in the Chair of Peter for eight years and four months. His body was brought to Rome, and was placed in the Vatican, together with the remains of Saint Gregory III, and of Blessed Peter the Deacon. Sacred worship, already shining with the splendor of miracles, was offered to him, and in other places as well.

[*Latin ed. p. 340*]

340 Appendix VIII - Decrees which are valid in those regions, up to this time, which the Supreme Pontiff Pius IX, after consultation with the

Translated by churchlatin.ai, a product of Boyne Archives

Congregation of Sacred Rites, approved and confirmed. These are:

ON THE MASS. The Mass. It was decreed: besides the prayer which will be as mentioned above in the Office, in Romana or Mechlin. Concerning the Canonization of the Blessed John Berchmans, a scholar of the Society of Jesus. DECREE. Since it was necessary to act in the ordinary session of the Congregation of Sacred Rites regarding the validity of processes constructed by Apostolic authority concerning new miracles, which are said to have been wrought by God the Most High, through the intercession of the aforementioned Blessed John Berchmans, the Cardinal, the aforementioned, Prefect of the same Sacred Congregation, and initiator of this cause, at the urging of the Reverend Father Joseph Boero, Promoter of the cause itself, proposed the following question in the ordinary meetings of the Sacred Rites held this day in Vaticanum: Whether it is established that the processes constructed by Apostolic authority, both in Bruxellis and in Gandavi, concerning new miracles which have occurred after the veneration of the aforementioned Blessed was granted, have been properly and correctly examined, and whether the testimonies have been legitimately obtained in the case and to the effect of what is being considered? After the Sacred Rites, diligently considered all things, and after the Reverend Father Lawrence Salvati, Assistant to the Promoter of the Holy Faith, wrote, they decided: affirmatively, except for extrajudicial testimonies, which are to be considered as aids, and with the condition that the words spoken for the healing are to be carefully examined for caution. On February 15, 1873. After the aforementioned matters were faithfully reported to the Most Holy Father, Pope Pius IX, by the undersigned Secretary, His Holiness approved and confirmed the judgment of the Sacred Congregation, and, as requested, graciously granted the healing. On the 27th day of the same month and year.

ON THE CANONIZATION. Concerning the Canonization of the Blessed Peter Claver, a professed priest of the Society of Jesus. DECREE. Since it was necessary to act in the ordinary session of the Congregation of Sacred Rites regarding the validity of processes constructed by Apostolic authority concerning new miracles, which are said to have been wrought by God the Most High, through the intercession of the aforementioned Blessed Peter Claver...

[*Latin ed. p. 341*]

Appendix VIII - Decree 341, also by the Most Reverend Father Joseph Boero, Postulator of this cause, signed by me, Cardinal, Prefect of the aforementioned Sacred Congregation and Promoter of the cause, the following question was presented during the ordinary meeting of the Sacred Congregation of Rites, held on the date indicated at the Vatican: Whether it is established by Apostolic authority that the processes concerning new miracles wrought by God through the intercession of the aforementioned Blessed,

Translated by churchlatin.ai, a product of Boyne Archives

after the granting of veneration, are valid; whether the witnesses have been duly and properly examined; and whether the testimonies produced have been legitimately obtained in the case and to the effect of what is being considered? Furthermore, after careful consideration by the Most Reverend Fathers entrusted with the safeguarding of the Sacred Rites, and after hearing the Most Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, they responded: Affirmative, except for the witnesses Margaret Schnyder and the surgeon Smith, whose testimonies are to be considered only as supplementary. Dated February 15, 1873. Subsequently, a faithful report on the foregoing was made to His Holiness Pope Pius IX by the undersigned Secretary of the Sacred Congregation, and His Holiness deigned to declare the Rescript of the Sacred Congregation to be approved and confirmed in all respects. Dated February 27 of the same month and year. Naples, concerning the Beatification and Canonization of the Servant of God, Father Francis of Laculibero, Priest of the Order of Friars Minor of the Holy Francis of Assisi, Capuchin. DECREE. On the ninth day before the Kalends of December in the year 1867, when the Most Holy Pope Pius IX, with paternal benevolence, ordered that a question from the Commission for the Introduction of the Cause of the aforementioned Servant of God, Francis of Laculibero, be considered in an ordinary session of the Sacred Congregation of Rites, without the intervention or vote of the Consultors, although less than ten years had elapsed since the presentation of the Ordinary Process in the Acts of the Sacred Congregation of Rites, and although the writings themselves had not been examined and reviewed; thus, and therefore, the Most Reverend Cardinal Hannibal Capalti, Promoter of this Cause, at the request of the Most Reverend Father Amadeus of Orvieto, Postulator of this Cause, and after considering the letters of illustrious men of ecclesiastical dignity, especially those gathered at the ordinary sessions of the Sacred Rites at the Vatican on this day, proposed the following question for discussion: Whether the Commission for the Introduction of the Cause of the aforementioned Servant of God should be appointed in this case and to this effect? And the Sacred Congregation, after mature deliberation, and after hearing the Most Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, decided to respond: Affirmative, or, the Commission should be appointed, if it pleases the Most Holy [Pope]. Dated February 15, 1873. Subsequently, a faithful report on the foregoing was made to the Most Holy Pope Pius IX by the undersigned Secretary.

[*Latin ed. p. 342*]

Appendix 342. VITI – The Decrees, having received the approval and confirmation of the Sacred Congregation, were signed with his own hand by the Commission for the Introduction of the Cause of the Venerable Servant of God Francis of Laculibero. On the 27th day of the same month and year. Cardinal PATRIZI, Bishop of Ostia and Velletri, and S.R.C. Prefect. D.

Translated by churchlatin.ai, a product of Boyne Archives

Bartolini, S.R.C., Secretary.

FROM THE AUTHENTIC DECLARATION OF THE HOLY CONGREGATION OF THE ROMAN INQUISITION.

Concerning the Constitution of the Apostolic See, by which the limits of imposed censures are defined: this declaration, by order of the Holy Congregation of the Inquisition, has been brought to the attention of the Local Ordinaries to whom it pertains, through circular letters which follow. The circular letters of the Holy Congregation of Propaganda Fide, containing said declaration, are as follows:

"Concerning: Since a doubt has been presented to the Supreme Holy Congregation, whether, after the Constitution of the Apostolic See, promulgated by the Most Holy Lord Pope Pius Divine Providence, Ninth, on the 14th of October, 1869, the imposed censures against Ecclesiastics and Missionaries working in the commerce of the Orient, prescribed in the Constitutions of Urban VIII, *Ex debito*, of February 22, 1633, and of Clement IX, *Sollicitudo*, of July 17, 1669, still remain in force, the Most Reverend Inquisitors General, in a Congregation held on the 4th of December, 1872, having considered the reservation or exception made to the paragraph: Those very censures, which this aforementioned Constitution..."

[*Latin ed. p. 343*]

It was deemed fitting to request that the Most Holy Lord would deign to declare that the aforementioned constitutions of Urban VIII and Clement IX are still in force, and that this declaration should be notified by this Holy Congregation through circular letters, as is done herein, to any missionaries whatsoever residing in the Orient and in America. Furthermore, His Holiness deemed it fitting to agree with this opinion in all respects. In the meantime, I pray to God, etc.

FROM WHICH IT MAY BE GATHERED: I. Having examined the paragraph of the Constitution, it does not appear that the aforementioned constitutions of Urban VIII and Clement IX, which require the censure of excommunication, are included in that paragraph; because no censure pertaining to the internal governance of any person is considered in this paragraph. II. Especially since, when dealing with a hateful matter, extension [of the censure] does not take place unless it is clearly demonstrated that an extension must be made. III. Therefore, that censure inflicted upon those missionaries who were engaged in commerce in the Orient and in the aforementioned places should have been included among those that are abrogated, since it was not renewed in the Apostolic Constitution.

1 2 1 The aforementioned paragraph reads as follows: "Those censures, whether of excommunication, or suspension, or interdict, which have been imposed by Our constitutions, or by the constitutions of Our predecessors, or by the sacred canons, apart from those which We have enumerated, and

Translated by churchlatin.ai, a product of Boyne Archives

which have remained in force to this day, whether for the election of the Roman Pontiff, or for the internal governance of any orders or regular institutions, or of any colleges, congregations, associations, or places of piety of any name or kind, We wish and declare that all of these are firm and remain in their full force." Furthermore, the censure imposed upon missionaries engaged in commerce in the Orient, etc., is not a censure that pertains to the internal governance of any group of persons; but it is a censure that pertains to the governance of the Catholic Church in those Oriental regions and in the provinces of America. Those censures which, under one respect, may be called local and particular, under another are universal, and, in order that they might remain in force, they were renewed in the aforementioned Apostolic Constitution; as is the case with that which is inflicted upon...

[*Latin ed. p. 344*]

344. An authentic declaration is distinct from an authentic resolution or legal decision, which is based on common rules of interpretation. 1. The matter at hand concerns not a legal resolution or decision, but an authentic declaration, by which, under the authority of the Apostolic See, the constitutions of Urban and Clement are declared to be understood in a certain way, and are made a part thereof. 2. APPENDIX IX. The constitutions of Urban VIII and Clement IX, by which commerce is strictly prohibited under a penalty of excommunication incurred by the very act, for any missionaries in the provinces of Eastern India, China, and Japan, and also in both Southern and Northern America. It is fitting briefly to indicate the history of these constitutions, so that their purpose may be more fully understood, and so that doubts which may arise in determining those who are subject to the censure and penalties of these constitutions may be more easily resolved. Gregory XIII, by Apostolic letters dated January 28, 1585, forbade, under penalty of excommunication and other penalties, that ecclesiastical men should dare to go to the regions and provinces of China and Japan for the purpose of preaching the Gospel, teaching Christian doctrine, or performing other ecclesiastical duties, without the express permission of themselves and the Apostolic See; and forbade those who take sacred relics from the Roman crypts; and forbade others to be initiated into the sacred orders elsewhere, while commemorating in Rome. Such constitutions, if they had not been renewed in this constitution, would have been considered among those to be abrogated, since, strictly speaking, they do not concern the internal governance of any group of persons. I have said enough about this distinction in the Preface to the commentary on this constitution. Also, see what I have noted on the matter concerning alms for the second Mass,

Translated by churchlatin.ai, a product of Boyne Archives

pages 76 and 77. 1 2

[*Latin ed. p. 345*]

Appendix IX 345. Afterwards, Clement VIII, having become more certain that both China and Japan, as well as the islands, regions, and provinces adjacent to them, and the neighboring kingdoms of Eastern India, were vast and populous, and that more laborers and ministers were necessary to bring so great a multitude of souls to the Catholic faith and to nourish them with spiritual sustenance than could be provided by the Society of Jesus alone, granted to all and each of the masters of the Mendicant Orders, that, as necessity demanded, they might send any suitable religious of their own Order, leading a contemplative life, to those places, adding the stipulation that they might send said suitable religious only through Portugal, and that, after undertaking that voyage, they should proceed to India and the city of Goa, to the Superiors of the Orders existing in those parts, and he forbade, under penalties and other punishments, that they should dare to pass from the Philippine Islands to Japan and other neighboring islands and regions. Afterwards, Paul V, having learned that the prohibition of access to India and the city of Goa by any means other than through Portugal had not produced the results that were hoped for, nor was it useful to the business of propagating the Catholic faith, granted that the religious might also access the Japanese islands and other regions through other routes than through Portugal. Urban VIII succeeded him, who, by Constitution, *Ex debito*, on February 22, 1633, recalling this history, confirmed the disposition of Paul V, and added the penalty of excommunication to those who would hinder access to those places by any other means, and he strongly urged that the religious, in teaching moral doctrine, should conform to the Roman Catechism and the *Great* and *Small* Doctrines of Cardinal Bellarmine. After this historical account, Urban VIII proceeds to the matter concerning us in § VIII, where he forbade all Missionary religious, under pain of excommunication and other severe penalties, from engaging in commerce.

"§ 8. Furthermore, because, according to the sacred canons, the decrees of the councils, and the apostolic constitutions, commerce and secular negotiations are strictly forbidden to all religious, and even to other ecclesiastical persons, especially those in established religious orders, and because it is very harmful, improper, and indecent for such persons to be engaged in divine worship, and especially for those who are destined to preach the most holy Gospel of Christ, to involve themselves or to devote themselves to these trades and negotiations, in accordance with the provisions of the aforementioned sacred canons and decrees, and of the apostolic constitutions, by the authority of the Apostles, and by the tenor of the present document, all religious of any Order and Institute, both Mendicant and non-Mendicant, including the Society of Jesus, and each of them, both in

Translated by churchlatin.ai, a product of Boyne Archives

the aforementioned places now existing, and in the future..."

[*Latin ed. p. 346*]

346 Appendix IX: To those who, in any manner whatsoever, engage in commerce or trade, whether they do so directly or indirectly, through themselves or others, whether in their own name or in the name of the community, we forbid and prohibit such activity, under pain of excommunication latae sententiae, incurred by the very act, and with the loss of all active and passive rights, offices, and degrees, and of all dignities, including the incapacity to exercise them, and furthermore, the forfeiture of all goods and profits derived therefrom; all of which shall be reserved to the Superiors of the Missions, from which the offenders originate, for the use of the Missions, which these same Religious Orders have and will have in the aforementioned Indies, and not for other purposes; We strictly command these same Superiors, under the same penalties, to be vigilant in this matter, and to proceed against those who offend with the aforementioned penalties, depriving them of the power to remit or condone, even the smallest amount, from the aforementioned goods and profits.

"§ 9. If, perchance, any controversies should arise among the Religious of the aforementioned Orders, may God prevent it, the Bishops of the aforementioned places, existing at the time, shall resolve and settle them, as delegates of the Apostolic See. If, however, more serious matters should arise, they shall report them to Us and to the Roman Pontiffs and Our successors as soon as possible, so that, with due deliberation, provision may be made for what must be decided and determined in them; thus We will and order."

The following are the most extensive confirmatory and derogatory clauses, and in § 12, the following is also commanded: "Therefore, We command all Patriarchs, Archbishops, Bishops, and other Prelates of churches and places, both Regular, established throughout the world, to take care that these present letters are inviolably observed by all in their respective provinces, cities, dioceses, chapters, and jurisdictions, and that, whenever required by the aforementioned Orders, they are solemnly and publicly proclaimed."

After this Constitution of Urban VIII, the Constitution of Clement IX, *Sollicitudo*, was issued on June 17, 1669, in which he confirmed the Constitution of Urban VIII regarding commerce, and extended it to secular Missionaries and to other regions, namely, to America, both Southern and Northern. The Constitution is as follows: "The pastoral solicitude of the office with which We preside over the governance of the Catholic Church throughout the world, through the ineffable abundance of divine wisdom and clemency, urges Us to address matters that may hinder or impede the propagation of the Catholic religion and the Catholic faith, and that may affect the honor of men called by the Lord, and especially of those Religious

Translated by churchlatin.ai, a product of Boyne Archives

who have renounced themselves and despised all worldly things in order to make Christ profitable and to devote their hearts and minds solely to obedience to Him with a tranquil spirit."

[*Latin ed. p. 347*]

Appendix IX 347. Let us strive to remove this stain, to eliminate it with wholesome correction, and to uproot it completely.

§ 1. Indeed, not long ago, our predecessor of blessed memory, Pope Urban VIII, considering through the sacred canons, the decrees of councils, and the apostolic constitutions, that commerce and secular negotiations are strictly prohibited for all religious, and also for other ecclesiastical persons, especially those established in the sacred orders, and that it is very harmful, improper, and indecent for such persons, who are dedicated to the divine service, to engage in or concern themselves with such commerce and negotiations, through a certain brief issued on February 22, 1633, among other things, forbade all religious of every Order and institute, both mendicant and non-mendicant, including the Society of Jesus, and each of their members, both then existing in the islands, provinces, regions, and kingdoms of India Orientalis, and China, and of the Laplanders, as well as those to be sent there in the future, to engage in any and all commerce or negotiations in any way, whether by themselves, or through others, whether in their own name, or in the name of the community, directly or indirectly, or under any other pretext, cause, or color, under the penalty of excommunication, incurred by the very act, and with the deprivation of active and passive voice, of offices and degrees, and of all dignities, and of the inability to hold them, and furthermore, with the loss of merchandise and profits derived from them: all of which should be reserved by the superiors of the religious orders, from whom the offenders came, for the use of the missions which those same orders had and would have in the aforementioned India, and not for other uses; and he strictly commanded these same superiors, under the same penalties, to be vigilant in this matter, and to proceed against the offenders with the aforementioned penalties, depriving them of the power to remit or condone even the smallest amount from the aforementioned merchandise and profits, and to take other measures as is more fully contained in the aforementioned brief of our predecessor, the tenor of which we wish to be considered fully and sufficiently expressed and inserted verbatim in the present document.

§ 2. But now (as we have learned with great sorrow of mind) many of these religious and ecclesiastical persons, forgetting their own profession and the very serious ministry assigned to them, do not abstain from such secular commerce and negotiations, but have tried to excuse themselves from the due observance of the aforementioned brief of our predecessor under various pretexts, colors, and subterfuges, and are striving at present, to the detriment of the salvation of their souls, to give a pernicious example

Translated by churchlatin.ai, a product of Boyne Archives

and scandal to many. We, being taught by the salutary precepts of the Doctor of the Gentiles, that no one who serves God should be involved in secular affairs,

[*Latin ed. p. 348*]

348 Appendix IX, so that it may please Him to whom He has proven Himself, to vigorously combat this great and ruinous evil against the Church of God, to eliminate the occasions of scandals arising from it, and to prudently promote the salvation of souls and the propagation of the Christian religion and the Catholic faith, as far as is permitted to us from above, and to completely deprive worldly hopes of gain from those dedicated to heavenly service, especially those destined for the conversion of the infidels and the preaching of the Gospel, who, as good soldiers of Christ, ought to labor and honor their ministry, so that, with the help of heavenly favor, they may strive more diligently and generously to enrich the Lord's storehouses with new fruits, we have decreed to entirely abolish.

§ 3. Therefore, adhering to the sacred canons and decrees and constitutions mentioned above, and especially approving and renewing the Constitution of our predecessor, Urban, in those matters that do not contradict the present letters, and concerning the aforementioned, we make new dispositions and enactments, by our own authority, and with certain knowledge and mature deliberation, and by the fullness of the apostolic power, to all and each ecclesiastical persons, both secular and regular, of whatever state, rank, condition, and quality, and of any Order, Congregation, and Institute, both of mendicants and non-mendicants, including the Society of Jesus, and to each of them who, for a time, have been sent by the Apostolic See, or by the venerable Congregation of our brothers, the Cardinals, Prefects of the Congregation for the Propagation of the Faith, or by their superiors, under the name of missionaries, or by any other title, to the islands, provinces, kingdoms of India, and especially to the province of the Society of Jesus called Japan, and to the parts of America, both southern and northern, under a sentence of excommunication, and the deprivation of active and passive voice, and of offices, dignities, and ranks of all kinds obtained by them, and the inability to obtain those and other things in the future, as well as the loss of all goods and profits incurred by this very act, and other penalties to be imposed by us and by the Roman Pontiff existing at the time, or by the aforementioned Congregation of Cardinals, by the tenor of the present decree, we strictly prohibit and interdict them, equally and together, from engaging in any worldly commerce and negotiations, under any pretext, title, color, artifice, cause, occasion, or form, even once, either by themselves, or through ministers, or other auxiliary persons, directly or indirectly, either in their own name, or in the name of their respective religions or congregations, and societies, including the Society of Jesus, or any others, and in any way and manner whatsoever. And from now

Translated by churchlatin.ai, a product of Boyne Archives

on, as from then, and conversely, after such an event has occurred, all goods and profits that have arisen and will arise from such commerce and negotiations, shall be used for the benefit of the poor, hospitals,

[*Latin ed. p. 349*]

Appendix IX 349. To ecclesiastical seminaries and establishments (but not to religious orders, congregations, or societies, even of Jesus, or to their institutions, which have erred in the aforementioned matters or concerning them, but to others who have not erred), we apply the following: those who are obligated to report the earnings and profits of such places to the Ordinary, or to his spiritual vicars general, or to the official, or to the apostolic vicars or pro-vicars. These individuals, as delegates of the aforementioned See, must distribute and expend these funds solely for the purposes for which they are intended, and not for other uses; and we strictly charge them with their conscience in this matter. And because those who err in the aforementioned matters often presume to excuse themselves under the pretext of necessity for their missions, we decree and declare that such excuses are in no way sufficient or permissible for them or for anyone.

§ 4. Furthermore, we declare that the aforementioned censures and penalties apply to the immediate superiors, as well as to the provincial and general superiors of the aforementioned orders, congregations, and societies, even of Jesus, who, with respect to their respective subordinates, have not punished those who, even for a single instance, have erred in the aforementioned matters, or at least have not removed them from the positions in which they committed the offense; and no one from among the aforementioned who have erred can be absolved from the sentence of excommunication by superiors or by anyone else, even if empowered to do so, except in the article of death, unless the profits of such places are first restored.

From these constitutions, it is permissible to determine which persons are included under the censure of excommunication, and which are not. All and each ecclesiastical persons, both secular and regular, who have been sent for a time under the name of missions, or under any other title, or who reside in those places in any way, are included. Hence, it does not appear that ecclesiastical persons native to those places are included, since they have neither been sent nor do they reside there in the sense in which the Constitution speaks. The residence to which the Constitution refers is that of ecclesiastical persons who, although not sent for the sake of missions, nevertheless come to those places and reside there. This seems to be derived from the entire meaning of both Constitutions: for both Constitutions are directed against those who, under the title of the propagation of the faith or in any way promoting it, come from Europe to those places, and who, distracted by business and commerce, cause scandal to the natives by seeking profit. Therefore, ecclesiastical persons native to those places

Translated by churchlatin.ai, a product of Boyne Archives

(who do not reside there but exist in those places) are, although included under the general law of the Church, which prohibits commerce to ecclesiastical men, whether by themselves or by others (see Constit. Benedicti XIV, Apostolicae, 25 Februarii 1741), not apparently included under the censure of excommunication of which the Clementine Constitution speaks.

[*Latin ed. p. 350*]

350 Appendix IX. Therefore, if the ecclesiastical Hierarchy were established or existed in those places, in such a way that dioceses canonically instituted were governed according to the sacred Canons by the indigenous clergy, and no longer required European Missionaries, such special Constitutions would cease to be in effect, since the reason for their existence, which consists in Missionaries drawn from Europe, would cease to exist. Furthermore, it may be asked under which section of the list of censures such an excommunication should be placed in the Apostolic Constitution, whether under the censures of excommunication reserved to the Roman Pontiff, or under censures reserved to no one. Answer: I believe it can suitably be placed under the list of excommunications simply reserved to the Roman Pontiff: namely, in the same way that the excommunication IV is listed under that section, which is imposed on those who do not denounce hidden leaders and heads of sects until they have denounced them. A similar clause is attached to the excommunication of which we are speaking in the words of the Clementine Constitution: "No one of those who have committed the aforementioned offenses can be absolved by superiors or by any other person, even if empowered to do so, except in the article of death, unless they have first restored the aforementioned profits. But if they have fulfilled the condition of restoring the profits, they can be absolved by any confessor, as in the article of death."

FROM THE DECREE of the HOLY CONGREGATION OF BISHOPS AND REGULAR CANONS concerning the proportionate reduction of ecclesiastical pensions due to the usurpation and grievances of Church property existing in Italia. "Since, in these recent times, the revenues of ecclesiastical benefices existing in Italia have suffered a considerable diminution due to changes in circumstances, those who hold such benefices have considered themselves no longer able to bear the burdens imposed upon them. In such circumstances, the most serious thing for them is..."

[*Latin ed. p. 351*]

Concerning ecclesiastical pensions, it was deemed that those who were legitimately invested or reserved with benefices should be urged to contribute to the payment of pensions. Therefore, after numerous petitions were presented to this Holy Congregation by Bishops and superiors of religious orders, and after careful consideration of the matter, it was decided,

Translated by churchlatin.ai, a product of Boyne Archives

either wholly or in part, to exempt certain individuals from the burden of paying pensions. On the other hand, regarding those pensioners who contended that nothing should be deducted from the pensions due to them, the Most Holy Pope Pius IX, to whom the aforementioned petitions from both sides had been presented on July 2, 1869, ordered that the matter be submitted to the examination of the Most Eminent and Reverend Fathers of this Holy Congregation in a plenary session, in order to establish a general rule that would justly and equitably address such disputes. This matter was then thoroughly discussed at subsequent general meetings, and after deliberation, the Most Eminent Fathers requested that their opinions be presented to the Supreme Pontiff, who, with his most wise and supreme judgment, would decide what was most just and appropriate in this matter, exercising the fullness of his authority. This was indeed accomplished, as evidenced by the undersigned Under-Secretary of this Holy Congregation, in an audience held on January 20, 1871. Thereupon, the Most Holy Pope, after carefully considering all aspects, judged that the following general rule should be established and observed: namely, that the loss or diminution of revenues from benefices should affect beneficiaries and pensioners alike, without any distinction being made between the benefices and the pensions themselves, so that, in proportion to the revenues diminished or lost, the pensions owed or to be paid should also be proportionately reduced or cease. However, with regard to cathedral (or episcopal) churches and parochial churches, which are subject to the burden of pensions, it was expressly decreed and prescribed that, in the pensions to be paid by them, their share should always be maintained in full and remain intact, in accordance with the form of the Council of Trent. Furthermore, His Holiness declared and ordered the following: first, that...

[*Latin ed. p. 352*]

352 Concerning ecclesiastical pensions: Whatever doubt or question arises between the aforementioned beneficiaries and pensioners, it shall be solely and exclusively known and resolved by this Holy Congregation of Bishops and Regulars, in a just and equitable manner, excluding contentious legal proceedings; secondly, if any cleric, having been ordained with the title of pension, should, due to the execution of this norm, be deprived, either partially or entirely, of the sacred patrimony, he shall incur no suspension for this reason, nor shall he be subject to ecclesiastical penalties; thirdly, if, before the promulgation of this decree, certain pensions have been paid in full or in part in a greater amount than that established in this general norm, no right shall arise from this very norm to demand the repayment of such amounts as being due, or to include them in future installments. All of these things, His Holiness willed, established, and decreed. Contrary provisions, even those with special and individual mention, notwithstanding. "Given from the Secretariat of

Translated by churchlatin.ai, a product of Boyne Archives

the Holy Congregation of Bishops and Regulars, on the 28th of January, 1871." A. Card. QUAGLIA, Prefect. A. Trombetta, Sub-Secretarius. FROM THIS DECREE, ONE MAY GATHER: I. That here we are not dealing with pensions in the broad sense, such as those that could be considered portions derived from some source of revenue; but rather with pensions in the strict sense, received upon benefices generally, not by right, but by custom introduced, which are called by the single name of pensions. II. That no distinction is made based on the title under which such pensions were granted, whether by a gracious or burdensome title, or by a title...

1 These conditional words are added for clarification, since, after the Apostolic See's Constitution on moderation, certainly no censure would be incurred for this reason; nor, furthermore, could censure or penalty be imposed by Ordinaries for the cessation of the title of patrimony from this decree.

[*Latin ed. p. 353*]

Concerning ecclesiastical pensions 353: justice and equity: therefore, all pensions, from whatever source, should be imposed in an equal manner, as stipulated by the Decree. III. This is to be understood in such a way that, since pensions, by their very nature, are ultimately portions of the beneficial fruits which remain after the due portion of the beneficiary has been taken, after deducting the beneficiary's fruits, and after removing any legal precedence, if any exists, the pensions should be considered diminished by the same amount. IV. Such a diminution must be made with due consideration of all burdens or taxes imposed by the usurping government, or of any diminution of revenues resulting from the forced conversion of ecclesiastical property into eventual revenues: so that both the beneficiary and the pensioner, in equal proportion, may bear the inconveniences of these burdens, after having set aside all complaints. V. However, parish and cathedral churches, that is, parish benefices and episcopal mensal stipends, are to be excepted, the fruits of which cannot be so diminished by pensions that the Tridentine portion remains.

I. REGARDING THE REDUCTION OR SUPPRESSION OF PENSIONS. May 30, 1873. In the present circumstances in Italy, where, through usurpation, through enormous taxes, and through the conversion of ecclesiastical property into eventual revenues, the entire system of benefices has been overturned, among the questions being discussed, one is not the least important, and it concerns pensions. 1 See the case concerning pensions, which you have in Vol. V, pages 172 and following. There have been those who, interpreting the words in the Decree as accurately expressed for cathedral churches, which were also explained by the words: or episcopal mensal stipends, understood "benefices" to mean the benefices of a cathedral church; not realizing that, in the Council of Trent, session 24, chapter 13, concerning reforms, where this

Translated by churchlatin.ai, a product of Boyne Archives

specific portion is mentioned, the terms "cathedral churches" and "parish churches" refer to episcopal mensal stipends and parish benefices. How pensions are usually imposed on parish benefices, see in Vol. II, pages 222 and following, as well as in Vol. IV, pages 523 and following. 2 Ada, vol. VII, page LXXVIII, 23.

[*Latin ed. p. 354*]

354 Concerning ecclesiastical pensions by which benefices were commonly burdened. In this matter, the Holy See is entirely dedicated to ensuring that, while maintaining equity, questions are anticipated and resolved through general norms as much as possible. Therefore, after numerous arduous discussions in the Holy Congregation of Bishops and Regular Canons, a wise Decree was issued by the authority of the Most Holy Father, which I have explained above. The questions that arise from it are entirely related to the interpretation of that same Decree or its application to particular cases, which, although more or less foreseen, it was not appropriate to include in the general Decree, lest confusion arise. In the present Consultation, certain doubts are proposed so that their solutions may be considered as general norms for resolving such questions. 1. A summary of the facts. In the Decree explained above, the following exception is made: "However, concerning cathedral (or episcopal) churches and parochial churches subject to the burden of pensions, it was expressly desired (by the Most Holy Lord) and prescribed that, in their favor, the full amount must always be preserved and remain intact in the pensions to be paid by them, according to the form of the Council of Trent." Furthermore, in Session 24, Chapter 2, concerning Reforms, the Fathers of Trent, intending to increase the revenues of cathedral and parochial churches, added: "To this, in the future, all cathedrals of the Church, whose revenues do not exceed the sum of one thousand ducats, and all parochial churches, whose revenues do not exceed the sum of one hundred ducats, according to their true annual value, shall not be burdened with any pensions or reservations." Now, this Tridentine amount of 1000 ducats for cathedrals and 100 ducats for parochial churches, 1. When laws are made in which many cases are considered, they become obscure and confusing: it is fitting that, in making laws, the reason for the law is explained, so that the general provision of the law is clearly stated. Interpretations follow, whether these are authentic or private. See the teaching of St. Thomas on this matter, page 298, in the note.

[*Latin ed. p. 355*]

Concerning ecclesiastical pensions: It was deemed appropriate that a certain portion be assigned for those times, or that, with the passage of time, it might no longer be deemed sufficient, or that a larger amount might be established by Bulls of erection; therefore, it was inquired whether the

Translated by churchlatin.ai, a product of Boyne Archives

quantity of the portion in Trent should be understood in the new Decree in a definitive or rather a demonstrative sense. And if it remained only "1000 Ducats for cathedrals" and only "100 Ducats for parish churches," would the obligation of paying the pensions cease, or not? And if the income of the said institution exceeded the sum of 1000 and 100 Ducats, how should the amount of the pensions to be paid be calculated? How should the value of the Ducats be estimated? Such questions were raised, so that their solutions, for various matters, might be applied as general norms. A synopsis of the discussion. REGARDING THE FIRST DOUBT: It is generally observed that, if one were to speak of an abstract interpretation of the indicated chapter of the Council of Trent, it does not seem appropriate for the Holy Congregation of Bishops and Regular Canons to judge, since the authentic interpretation of the Council of Trent pertains to the Holy Congregation of the Council, by its very institution: concerning which matter, Cardinal De Luca wrote in the *Relationes Romanæ Curiæ*, part 7, discourse 1, paragraphs 5 and 6: "According to the more frequent style of [the Holy Council], 'the principal purpose is in this part of interpreting and providing oracles in the abstract regarding doubts that are proposed... and regarding this interpretative part, other Congregations do not intervene; therefore, this power is exclusive; the other, of execution or observance [of the Council of Trent], is cumulative with others, and especially with the Congregation of Bishops and Regular Canons.'" And if, from a special power granted by the Most Holy Lord to determine the norm for paying pensions in the present circumstances, the power of interpreting the said chapter is also understood to be included, then the chapter of Trent, concerning...

[*Latin ed. p. 356*]

356 Concerning ecclesiastical pensions, it must be understood that the appropriate portion is to be determined demonstratively, and not taxatively. This is to be understood from the intrinsic nature of the appropriate portion, which is nothing other than the amount of revenue that is necessary for the proper support of the beneficiaries; therefore, it must correspond to the various circumstances of places, times, and persons. These circumstances, since they are constantly changing, cannot allow for a fixed and certain quantity to be established everywhere perpetually; therefore, the portion mentioned in Trent, of 1000 or 100, should not be understood taxatively. In this matter, the Glossa in chapter 30 of *De Praeb.* and dignities, at the word *Sufficiens*, is relevant. Hence, Ferraris states in the *Bibliotheca Canonica*, at the word *Congrua*, article 1, number 5: "Indeed, a certain rule cannot be prescribed in this matter, but the entire matter is referred to the prudent judgment of the judge in determining what is appropriate. From this judgment, consideration must be given to the dignity and quality of the person, to the officials and family,

Translated by churchlatin.ai, a product of Boyne Archives

etc." Also, Cardinal De Luca, in *De pensionibus*, discourse 16, number 3: "This matter (concerning the appropriate allowance) does not admit of a certain and uniform assessment, according to what we generally have in the matter of allowances, but must be regulated differently, according to the condition and quality of the churches, and the manner of living in the region, namely, according to the judgment of the judge." *SED CONTRARIO*, it is observed that the Council of Trent, in the aforementioned chapter 13, session 24, concerning Reforms, does not seem to be dealing with the determination of the appropriate portion; but rather, with the preservation of a certain quantity of revenue from the imposition of pensions, in order to prevent the abuse that had arisen, of burdening even the poor churches, whether cathedral or parochial, with pensions. Indeed, in that chapter, no mention is made of the appropriate portion; rather, the rubric and the context concern the increasing of the revenues of those churches. And since the poverty of the revenues arose from two causes, namely, from a lack of revenues, and from burdens imposed; it seems that in that chapter of Trent, methods were determined for increasing revenues, and for avoiding burdens, which were often pensions imposed by the civil authority under the pretext of patronage.

[*Latin ed. p. 357*]

Concerning ecclesiastical pensions: 357. How many discussions on the subject of such pensions were raised within the Council of Trent, can be ascertained from the history written by Cardinal Pallavicini. For some bishops desired such pensions to be abolished; others did not wish that mention be made of them, lest they be considered approved; others wished to repress abuses, but not to abolish them entirely, from which goods might arise. This opinion prevailed, and those were considered to have meager revenues who did not exceed 1000 and 100 Ducats, in order to restrain the power of imposing pensions. Therefore, it was not the intention of the Fathers to determine a true, proper, canonical portion, but to limit the abuse of imposing pensions. And this is confirmed by the complaints that were subsequently raised by princes, as if their rights had been violated by this decree of Trent. However, given that the decree of Trent established this quantity of Ducats, 1000 and 100, it can be inferred that this amount was in all respects determined to avoid fraud, and therefore should be accepted strictly; not demonstratively. This opinion is confirmed by the practice of the Curia, as reported by Pyrrhus Corradus in *Prax. Benef.* I. 5, c. i, n. 27, noting that, from this decree of Trent, a reservation of pensions concerning cathedrals and parishes was included in the Apostolic Letters issued by the Datary, with the clause: provided that 100 remain for the Rector, or 1000 for the Bishop, whereas previously, in the reservation of pensions, the clause was added: provided that it does not exceed one-third. Therefore, when the authors teach that Trent determined a proper canonical portion

Translated by churchlatin.ai, a product of Boyne Archives

for cathedrals and parishes, they should be understood to mean a proper portion in the broad sense; otherwise, they could not consistently teach that a proper portion cannot be determined by itself. And this broad sense is also accepted in the decree, *Cum Nuperrimis*, of which we are speaking; therefore, the words: "it must always be preserved intact and whole, in accordance with the form of the Council of Trent," should be understood to mean only 1000 and 100 Ducats, and nothing more. Therefore, just as...

[*Latin ed. p. 358*]

358 Concerning ecclesiastical pensions: Pensions could not have been imposed if the income were initially 1000 and 100 ducats; therefore, if, given the present circumstances, the income has been reduced to this amount, any pensions previously imposed cease to be valid, since they would fall under a circumstance from which they could not have originally arisen. From this, the answer to the second doubt also follows. REGARDING THE THIRD DOUBT. It also follows from what has been said that if the income exceeds 1000 or 100 ducats, while these amounts are maintained, the pension applies only to the amount that remains: thus, for example, if the income of a parish previously amounted to 1500 ducats, and a pension of 40 ducats was imposed, if, hypothetically, the parish's income is now reduced to 1100 ducats, after deducting 100 ducats for the parish priest, the pensioner would only have a right to 10 ducats, in proportion, as determined by the Decree. Similarly, if it is hypothetically assumed that an episcopal mensal had previously been burdened with pensions amounting to 500 ducats, with an income of 4000 ducats, and the mensal's income is reduced to 2000 ducats, the pensions would only burden 1000 ducats, and the provisions of the Decree would apply to this amount, in proportion, as with other beneficiaries and pensioners. REGARDING THE FOURTH DOUBT: It has been observed that pensions, in the granting of benefices, are always reserved with the clause: "provided that 100 remain for the rector, or 1000 for the bishop," without any mention of a specific sum; the authors agree that "ducats" should be understood. However, a difficulty arises in determining the value of the ducats, since some say that "ducats" should be understood as gold ducats of the Camera; this is indeed understood according to common usage, Rota Decis. 313, n. 3, *p.* u rec. A gold ducat is equivalent to 1 Roman scudo and 75 denarii; therefore, a proportionate amount should be maintained by the clause, so that it is equivalent to 175 Roman scudi for the parish priest, and 1750 Roman scudi for the bishop. Conversely, it seems legally certain that the opposite opinion is correct, that is, that under the generic name of "ducats" in the aforementioned formula, the value of the ducats should be understood according to the custom of the place where the benefice is located. Such doubts have arisen not long

Translated by churchlatin.ai, a product of Boyne Archives

after the Council of Trent, and the doubts have been proposed to...

[*Latin ed. p. 359*]

Concerning ecclesiastical pensions, 359. The Holy Congregation of the Council has been so instructed, as is stated by Garzia in *De Beneficiis*, part 1, chapter 3, paragraph 373: "The Holy Council Congregation decided: that the value of one hundred Ducats, concerning which this decree is established, should be understood to belong to the parish rector of the church which is burdened with the pension, according to the custom of each region." And again, the Holy Council Congregation, on March 30, 1594, declared these words: "The Congregation of the Council decided that the value of one hundred Ducats, which, according to the decree of chapter 2, session 24, concerning Reforms, belongs to the parish rector of the church which is burdened with the pension, should be understood according to the custom of each region." And, according to such declarations, Barbosa in *Ad Concilium Tridentinum*, book 1, chapter 1, paragraph 16; Cardinal De Luca in *De Beneficiis, Disputationes*, chapter 5, paragraph 60; and others, interpret the clause placed in the Bulls in this way, as does Lotterius in *De Re Beneficiorum*, book 1, question 1, paragraph 27; Gigante in *Consilia*, 38; Garzia in *De Beneficiis*, part 3, chapter 3, paragraph 131; and in *Rota in Neritonen, pensionis apud Farinae*, book 1, decision 332, paragraph 3, and in *Romana pensionis*, May 20, 1575, before Bianchetto. And, concerning practice, Pyrrhus Corradus in *Praxis Beneficiaria*, book 3, chapter 1, paragraph 33, testifies: "Therefore, from the aforementioned declarations and universal practice, it matters little that the expression of the value of a benefice and of a pension, which is levied on the fruits of that benefice, is made for a designated or other person, whether in a petition or in letters, in Ducats; because, nevertheless, the aforementioned one hundred Ducats are to be understood as belonging to the rector, according to the aforementioned declarations, and so it is practiced everywhere. Indeed, I have seen this observed in the parochial churches of the City, where a pension is imposed on the fruits of those churches. Therefore, it is not surprising that this is observed throughout, since the Roman Curia is the mother and teacher of other Curias. And thus, the aforementioned one hundred Ducats, for the parish rector of the church of the City itself, are understood as one hundred Roman *scudi* of money, according to the ratio of ten *juli* for each *scudo* of that money, as I said in the *Rota in Romana pensionum* printed with Buratti, decision 418, in which it was decided whether the one hundred *scudi* remained free for the parish church of Saint Mary of the Tint in the City, after the pensions had been paid on the fruits of the parochial church.

[*Latin ed. p. 360*]

360 Concerning ecclesiastical pensions: Regarding the Rector; for

Translated by churchlatin.ai, a product of Boyne Archives

although the letters speak of Ducats, and it is not added "of the Camera," it is to be understood that these are Ducats, of those "of which the oldest usage is in the Roman Curia: for commonly each Ducat consists of ten *juli*, which today is called a scudi coin... as also concerning that pension, which is reserved from the fruits, whether of a parish church or of another Benefice: for if in its expression there is no mention of Ducats of gold of the Camera or of another quality, as is customary in the beneficial letters of the Supreme Pontiff, the current value in the place of the Benefice is to be considered." Doubts. I. "Are the Ducats of one hundred and one thousand to be understood definitively, or rather demonstratively? And to the extent that affirmative regarding the first part, negative regarding the second. II. "If, for parishes or episcopal mensal stipends, the income is only one hundred or one thousand Ducats, does the obligation of paying pensions cease in the Titularships? III. "How and by what means must pensions be paid from the income of parishes, which exceeds one hundred Ducats, and from the income of mensal stipends which exceeds one hundred Ducats? IV. "In what currency should the value of one hundred or one thousand Ducats be understood?" RESOLUTION. The Congregation of Bishops and Regulars, which has repeatedly examined this matter of pensions, on May 30, 1873, considered it fitting to respond to the proposed doubts as follows: To I. Regarding the effect of which is spoken in the Decree "Cum Nuperrimis," affirmative regarding the first part, negative regarding the second. To II. Affirmative, provided that the present circumstances remain. To III. One thousand and respectively one hundred, a proportional reduction of pensions due to the diminution of the revenues of the Benefices.

[*Latin ed. p. 361*]

Concerning the Decree cited by you regarding pensions in ecclesiastical benefices, it is necessary to establish the following regarding the remaining revenues of said benefices. To effect what is stated in the cited Decree, if there is no explicit designation of a specific sum of money, it is to be understood that the sum of five Roman scudi, corresponding to thirty-seven and five-tenths of a Roman scudo (37.500), is to be applied to the imposition of the pension. FROM WHICH IT IS UNDERSTOOD: I. In the present circumstances in Italy, due to the unjust diminution of revenues, the entire matter concerning previously imposed pensions must be regulated according to the new Decree explained above. II. It is to be understood that the proportionate portion mentioned in the Decree refers only to the sum of one hundred or one thousand Roman scudi, whatever else might be said regarding chapter 13, session 24, of the Decrees of the Council of Trent. III. Episcopal pensions and parochial benefices, which are burdensome, are to be reduced to burdensome pensions based on the remaining amount after deducting one thousand or one hundred scudi,

Translated by churchlatin.ai, a product of Boyne Archives

and thus proportionately reduced, as if the pensions had been imposed from the beginning on the remaining amount after deducting one thousand or one hundred scudi. I said, as if the pensions had been imposed from the beginning on the remaining amount after deducting one thousand or one hundred scudi; for I understand this from the wording of the Resolution. Indeed, the Holy Congregation intends that the quantity of one thousand or one hundred scudi be preserved, and at the same time, while preserving the general rule of the Decree, the pensions should be preserved as much as possible; so that the pensions should not be reduced beyond what is necessary in favor of the Titular. But if you do not consider the pensions as having been imposed from the beginning on the remaining amount after deducting the fixed amount of one thousand or one hundred scudi, the pensions would be reduced beyond what is necessary in favor of the Titular; and thus they would be almost entirely reduced to nothing. Let us take, for example, the hypothesis that a parish priest previously received one hundred and fifty scudi from the benefice, on which a pension of forty scudi was imposed; now, however, due to burdens imposed by the government, the parish priest receives one hundred and ten scudi from the same benefice. If the pension is considered to have been imposed from the beginning on the remaining amount after deducting one hundred scudi, that is, on fifty scudi, then the arithmetic proportion will be established as follows: 77 = x; therefore, x = 50 / 100 * 40 = 20; that is, x = 50 / 100 = 0.20. Therefore, x = 20. Thus, the pensioner would be entitled to twenty scudi. Conversely, if you consider that the pension was previously imposed on all.

[*Latin ed. p. 362*]

362 Concerning Ecclesiastical Pensions IV. Why Pensioners should be considered not as sharers in all the true fruits, whether of a Bishopric or a Parish; but only as sharers in those fruits which exceed the portion of 1000 or 100. V. Therefore, even if there are cases in which Pensioners are considered as sharers in all the fruits, receiving the full pension, they should nevertheless leave to the Titular [holder of the office] the portion of 1000 or 100, and they would not have the right to this amount of pension, but only to a proportional reduction from the remainder after 1000 or 100. VI. However, it cannot seem to be said that this applies if it is shown that the income of the Titular has not been diminished by these present circumstances in Italiae, since a special provision only applies to those things that require special consideration; therefore, neither these Benefices nor Pensioners should be included in the Decree. VII. Furthermore, it follows that, during such circumstances, pensions should be changeable in proportion to the burdens, so that they may be increased or decreased at each time of settlement. 1. For a Parish, the arithmetic proportion of fruits and not of the remainder after 100, must be maintained as follows: 150/400 = 10/x, and it will be x =

Translated by churchlatin.ai, a product of Boyne Archives

400/10 = 40. Therefore, x = 40/10 = 4. 2. If the Pensioner were only entitled to 4, the pension would be reduced beyond what is necessary in favor of the Titular and would be almost reduced to nothing. Let us also assume that a Bishop previously received 4000 scudi from the episcopal table, burdened by pensions of 500 scudi; but now he receives 2000 scudi. The arithmetic proportion must be established as follows: 2000/500 = x, and it will be x = 4000/1000 = 4. Therefore, x = 4. The Pensioner would therefore no longer have the right to 500 scudi for the debt portions; but only to 166 scudi. 3. If a different proportion were established, that is, 4000/1000 = x, then x = 125. This also seems to be derived from the answer to the third question, by the words: "on account of the diminution of the revenues of Benefices, as mentioned in the cited Decree."

[*Latin ed. p. 363*]

FROM THE ACTS OF THE PONTIFF, AT THE CONSISTORY, LXXXVIII. MY LORD, OUR POPE, PIUS IX, BY DIVINE PROVIDENCE, ADDRESS GIVEN ON THE TWENTY-FIFTH OF JULY, MDCCLXXIII, TO THE VENERABLE CARDINALS OF THE HOLY ROMAN CHURCH, IN THE VATICAN. Brothers, "What we announce to you, Venerable Brothers, while addressing you, at the close of the past year, is that we must perhaps again speak of the daily increasing vexations of the Church; this, having been completed in the work of present iniquity, demands of us, those to whose ears that voice seems to sound, saying: Cry out. " Scarcely had we learned that a law was to be proposed to the legislative assembly, which, in this very esteemed city, as well as in the rest of Italy, would suppress Religious Families and subject ecclesiastical goods to public auction; we, abhorring this impious act, condemned whatever nefarious draft of this law, declared any acquisition of unjustly seized goods to be null and void, and warned of the censures incurred by the authors and supporters of such laws. But today, this law, although not only repugnant to the Church, and therefore to divine and natural law, but publicly reprobated by legal science itself, as being contrary to natural and all human law, and therefore invalid by its very nature and of no effect; nevertheless, it was approved by a majority vote of the legislative assembly, then by the Senate, and finally sanctioned by royal authority. "We deem it necessary, Venerable Brothers, to abstain from repeating those things which have so often been said to deter from the audacity of public..."

[*Latin ed. p. 364*]

364. We have already, with great earnestness, explained to those who govern the wickedness, malice, and harmful consequences of this law; but we are entirely compelled by duty to defend the rights of the Church, by our concern for the unwary, and by very charity itself, to announce with a loud voice to all those who have dared to propose, approve, and enact this

Translated by churchlatin.ai, a product of Boyne Archives

most unjust law, as well as to those who command, support, advise, adhere to, and execute it, and to those who purchase ecclesiastical property, that whatever they may have done or may do in this matter is utterly invalid, null and void, and that they themselves are to be subjected to a greater excommunication, and to other ecclesiastical censures and penalties, according to the sacred Canons, the Apostolic Constitutions, and the decrees of the General Councils, especially that of Trent, and that they incur the most severe divine wrath and are openly exposed to the danger of eternal damnation.

"Meanwhile, Venerable Brothers, while the necessary assistance for our supreme ministry is increasingly withdrawn, while injuries are daily heaped upon sacred things and persons, while our own and foreign enemies seem to be conspiring to suppress every exercise of ecclesiastical jurisdiction, and perhaps even to prevent the free election of him who ought to sit in this chair of Peter as the Vicar of Christ; what remains for us to do, except to turn more earnestly to Him who is rich in mercy and does not abandon His servants in times of tribulation?

"And indeed, the power of divine Providence is now clearly demonstrated in the perfect union of all the Bishops with this Holy See, in their most noble firmness against unjust laws and the usurpation of sacred rights, in the immense devotion of the entire Catholic family towards this center of unity, and in that vivifying Spirit by which faith and charity are strengthened and increased throughout the Christian people, bursting forth in works worthy of these joyous times for the Church.

"Let us therefore hasten the hoped-for time of clemency: let all of us, throughout the wide world, offer our pious devotion to our God."

[*Latin ed. p. 365*]

Let us strive to bring about this. All pastors of the sacred flock should encourage their priests, all priests their own people; and let all who are bowed down and afflicted cry out: "Come, Lord, come, do not delay; have mercy on your people, on your inheritance; do not relax your power before our faces, but in your mercy, we prostrate ourselves before you; for in your many mercies, we are comforted: rouse yourself and come, show your face, and we shall be saved." "Although we are conscious of our unworthiness, we are not afraid to approach the throne of grace with confidence: let us seek this through all the heavens, let us seek this especially through the Holy Apostles, let us seek this through the purest Bride of the Virgin Mary, let us seek this especially through the Immaculate Virgin, whose prayers have a certain influence with the Son of the kingdom. But beforehand, let us diligently strive to cleanse our conscience from dead works; for the eyes of the Lord are upon the just, and his ears are open to their prayers. That this may be accomplished more accurately and completely, we grant, by our Apostolic authority, a plenary Indulgence, once to be gained, and to be

Translated by churchlatin.ai, a product of Boyne Archives

converted for the suffrage of the faithful departed, to all the faithful who, having duly confessed and refreshed by the Holy Communion, have devoted themselves to pious prayers of this kind for the needs of the Church, on the day which the Ordinary shall designate in each diocese. Therefore, Venerable Brothers, although countless and truly grievous storms of persecution and tribulation may assail us, let us not despair, but let us be confident in him who does not allow those who hope in him to be confounded; for God's promise is, which cannot pass away: 'For in me he hoped, and I will deliver him.'" "Because he hoped in me, I will deliver him."

[*Latin ed. p. 366*]

FROM THE SACRED CONGREGATION CONCERNING THE COUNCIL OF TRENT. July 20th and December 14th, 1872. SUMMARY OF EVENTS. In the parish of P, located in the Italian diocese of N, having been vacant, the Bishop convened a competition through public announcements on September 8th, and designated the date on which the competition would be held, namely October 30th, although this time was subsequently shortened by ten days, due to a new circumstance. Seven priests submitted their names to the Curia, presenting along with them documents of merit and suitability, which are commonly referred to as the required qualifications. The Bishop designated eight hours for the examination, during which the candidates were to present written answers. Furthermore, the Bishop cautioned, as night approached, that the lights should not be lit, lest the candidates, according to an ancient custom, prolong the prescribed time for writing. This instruction of the Bishop was repeated again and again to the candidates. However, it happened that darkness arrived prematurely, due to clouds obstructing the evening light, so that, at the insistence of the candidates, with the exception of one, the lights were lit before the prescribed end of the time; and one or two did not insist on the Bishop's instruction not to light the lights. Before the prescribed eighth hour had elapsed, all the written answers were collected and delivered to the Bishop. The pro-synodal examiners had already determined the maximum number of points that could be awarded for knowledge and for fulfilling the requirements. The pro-synodal examiners, before the Bishop, for the purpose of evaluating the examination, according to the custom received in that Curia, assigned fifteen points for each case correctly answered, that is, five for each.

[*Latin ed. p. 367*]

With an absolute examination of the writings regarding the knowledge of the Candidates, only two out of seven were approved by the Examiners, since they had obtained a greater number of points; the others, on the contrary, were rejected outright, because they did not reach the number of points that those two had attained: and therefore, their merits or quali-

Translated by churchlatin.ai, a product of Boyne Archives

fications were not considered, since they were not approved in knowledge; and this, according to the established custom of that diocese.

After these events, the Priest P, who had already previously served as a Parish Priest for the Candidates in another parish, immediately protested, sending a petition to Rome*to the Most Eminent Cardinal Prefect, in which he requested a declaration of the nullity of the examination. He stated that the Bishop had warned the Candidates through the General Vicar not to waste time, since, as late hours approached, the lights should not be lit, and that this warning had been repeated by the Bishop at lunchtime; and that, in order not to violate the Bishop's orders, he had handed over his writings to the Bishop without the lights being lit; while the other Candidates had used the lights for about an hour. In the examination, he had presented twenty-nine points: two points were lacking for him to be included among those approved in knowledge.

Upon receiving such a petition from the Most Eminent Prefect to the Bishop for information and a vote, the Bishop related, among other things, that there was no law in the diocese prohibiting the lighting of lights during the examination; and that, indeed, there was no abuse to be investigated if the matter had been resolved optimally.

Furthermore, in those questions that comprised more than three inquiries, the points were to be divided according to the quality of the material; ten points for a concise answer and five for an explanation of a text from the Council of Trent.

Among the qualifications to be considered, they decided to include teaching experience, approval in other examinations, the office of Parish Priest, Confessor, and Preacher; so that whoever had held or held a teaching position would have one point; whoever had held the office of Preacher, one point; whoever had been approved in other examinations, one point; and whoever was engaged in the care of souls, two points.

They decided to include among the approved those who had obtained thirty-one points. And they decided that qualifications should only be counted for those who presented approval, that is, who presented thirty-one points in the examination.

[*Latin ed. p. 368*]

The competition: For 368 candidates, the competition extended until late at night. It was stipulated that the lights should not be lit for more than eight hours; however, since the evening clouds arrived sooner than expected, before the eight hours had elapsed, the lighting was permitted. Scarcely had the designated time passed when all the candidates submitted their written answers, although some may not have completed their own. The records of the competition were sent to Rome, and the judgment of the pro-synodal examiners was confirmed. However, other complaints were

Translated by churchlatin.ai, a product of Boyne Archives

received, and Eurus Pro-Datarius, doubting the validity of the competition, referred the matter to the Sacred Congregation of Councils by a rescript, instructing the complainant to exercise his right before the Sacred Congregation. After the records were sent to the Sacred Congregation, another petition arrived, alleging defects in the examination given by one of the two approved examiners. Following the customary procedures, that is, by setting a deadline for the parties to present their further arguments, the case was brought before the court to be examined according to the law. A summary of the arguments: The fiscal promoter, arguing for the Curia, maintained that there was no reason to doubt the validity of the competition, and among other things, pointed out that the complainant, the priest P, had not presented any complaint in the episcopal court, but had only complained publicly; 1 that he had suffered the greatest harm because the time assigned by the Bishop had been exceeded by the lights that should not have been lit; 2 that the pro-synodal examiners had not taken account of his requests, but only of matters of doctrine, contrary to the prescriptions of the sacred canons and the Constitution of Benedict XIV; 3 that the same examiners had issued an erroneous judgment, not approving him in doctrine. The fiscal promoter rejected these complaints made by the complainant priest. He proved, with the help of witnesses, that the eight hours had not been exceeded: the lights had indeed been lit, but before the time of the competition had expired; and conversely.

[*Latin ed. p. 369*]

In the proceedings, number 369, concerning the regulation of lights, it was stipulated that the time after the prescribed hours should be observed, so that this time would not be extended. Therefore, the Presbyter P. should be held accountable if he did not make proper use of the lights during the useful time. Regarding the second complaint, that he was rejected solely on the basis of doctrine, the prosecutor responded that this was done in accordance with the Constitution of Benedict XIV, with the addition of a long-standing custom of the diocese. Indeed, Benedict XIV, in establishing the rules for the examination, decreed in § 6, n. 4, that Examiners, after having finally determined in what each candidate excels in the gravity of their judgments, should, with equal, or perhaps greater, diligence, bring the requirements of the candidates back to the close bond of doctrine and science. From this Benedictine Constitution, it was argued that the requirements of those who have not previously been approved in terms of science could not be considered; lest the words of the Constitution become meaningless: "after having finally determined in what each candidate excels in the gravity of their judgments." To this, the long-standing custom of the diocese was added, which he asserted was also in accordance with the custom of the Roman clergy. Regarding the third complaint, he responded that the records of the proceedings had been sent to Rome, and that the

Translated by churchlatin.ai, a product of Boyne Archives

judgment of the Examiners had been approved.

BUT, in opposition to these points, Presbyter P. presented his reasons, repeating the complaints mentioned above, and adding others, especially concerning the secrecy maintained by the court after the proceedings, because of which he was unable to appeal immediately, nor to present all the necessary reasons; he complained about the lights that were lit after he had presented his resolutions on the cases; he complained about the public notices published for the announcement of the proceedings, in which the time was varied twice, and the proceedings were held before the appointed time. But after these points, he turned to another legal argument; arguing that, since he was not approved due to a lack of science, the Examiners should have considered his requirements together, he maintained that, according to the norms of the Holy Canons, science should be considered together with the requirements, and that judgment should be rendered based on all of these things taken together; and not solely on the basis of science. Records, volume VII, page LXXVIII, line 24.

[*Latin ed. p. 370*]

370. Indeed, the Council of Trent, in Session 24, chapter 18, concerning Reform, decreed: "After a thorough examination, those who have been judged suitable by the Examiners in terms of age, morals, doctrine, prudence, and other matters necessary for governing a vacant church, shall be presented." Therefore, the Priest argued, "To conduct an examination solely on the basis of knowledge, and to present only those deemed suitable based on that knowledge, is the same as contradicting the explicit dispositions of the Council of Trent." However, Benedict XIV, in the aforementioned Constitution, § 10, explained the words of Trent more fully, rejecting the contrary custom with these words: "We have heard, to our sorrow, that in many dioceses, the votes of the Examiners are concerned only with literary expertise, and they do not inquire about the age, education, seriousness, and moral integrity of the Clergy, nor about their prudence, nor about the duties they have previously performed..." Whoever understands the words related in chapter 18, session 24, concerning Reform, will clearly see how far such a practice deviates from the path of Trent. And, knowing this well, the Congregation of the same Council has repeatedly declared that the Examiners fail in their duty if they are only judges of doctrine, and do not inquire about those who, above all, possess probity of morals, diligence, previous service to the Church, and other qualities necessary and commendable for the office of Parish Priest. Nor does the same Pontiff proceed otherwise in the following paragraph: "But if any Clergyman should be called to be examined by bad Examiners, whose sole concern has been to investigate doctrine, without at the same time conducting a diligent investigation of other qualities that are suitable for the office of a pastor, the judgment would be such that even the judge to whom the case is appealed would

Translated by churchlatin.ai, a product of Boyne Archives

be limited to the investigation of doctrine alone, and would unjustly favor the Church with one who excels in letters, even if he is less suitable in other respects and sometimes unworthy; on the contrary, he should be rejected who, although less deserving in terms of doctrine, nevertheless surpasses in morals, seriousness, prudence, a proven reputation, long service to the Church, and a multitude of virtues and merits."

[*Latin ed. p. 371*]

Concursus 371. Furthermore, it clearly rejects the custom, § 16, n. j: "Moreover, a copy of the summaries (of the qualifications of the Candidates) is delivered individually to all the Examiners present at the competition, so that they may judge, both concerning knowledge and concerning life, morals, and other qualities necessary for the governance of the Church. And in number 4, the Pontiff continues: "After, therefore, the Examiners have discovered (what) each one excels in, through the gravity of their judgments, etc., the Examiners will apply an equal, or perhaps greater, diligence in examining other qualities conducive to the governance of souls, inquiring into the honesty of their conduct, their gravity, their prudence, the services they have rendered to the Church thus far, the praise they have acquired in other duties, and other admirable virtues closely associated with the bond of doctrine..." Having considered all these things together, they will reject the unqualified through their votes and will declare the qualified to the Bishop. Indeed, the Priest added, "all these things show that the Pontiff's intention was that the custom of considering only knowledge and admitting or rejecting Candidates solely on that basis, as being suitable or unsuitable, should be entirely condemned, so that a report from the Examiners, which is considered bad according to this custom, should be properly called a nullity." Furthermore, in the matter of this case, it is asserted that the votes were not counted together, and indeed, that the qualifications were not even subjected to examination. With this doctrine, the Authors are fully in agreement; Reclusius, *de concursibus*, p. i, tit. 5, no. 10: Barbosa, *Collectanea in Conc. Trid.*, sess. 24, c. 18, n. 118, where he wrote: "In the competition for parochial positions, not only the suitability with respect to knowledge is considered, but also with respect to age, morals, prudence, and the like, which are necessary for governing a parochial church," Massobr., etc. And ibid., n. 119: "In the competition for a benefice, when it takes place before the Ordinary and the Examiners, the Ordinary, with the Examiners, can prefer the one who excels more in knowledge to the one who seems more suitable in prudence, morals, and integrity for governing the Church." Also...

[*Latin ed. p. 372*]

372 The Sacred Roman Rota, decision 321, numbers 1 and 2, as cited by

Translated by churchlatin.ai, a product of Boyne Archives

Farina, page 1, in the posthumous work. Similarly, the Sacred Congregation of the Council has consistently held this view, as can be seen from the records of cases in Monopoli, April 28, 1759, section "Disputationes"; in Spoleto, April 8, 1848, section "Ubi"; and in Lucania, August 26, 1854, section "Quandoquidem." And writing about the manner of appointing parish priests, Benedict XIV, in his work on diocesan synods, Volume I, chapter 8, number 3, among other things, states: "And furthermore, the Holy Congregation clarified this matter in the Council of Trent; when the Bishop of Ávila inquired whether a parish provision is valid if the examiners have only submitted a report regarding literary qualifications, and whether the examination concerning morals, age, and other matters should be left to the Bishop; or if they have not submitted a report to the Bishop regarding all those found suitable, but only regarding the one who seems most suitable to them; it responded: 'That a report must be made regarding morals, age, and other matters, and that the examiners must report all those who have been judged suitable; and that the Bishop must choose the most suitable from among those who have been reported.' Indeed, the same Congregation considered it so necessary that the Examiners should not only consider knowledge, but also should investigate the other qualities of those who are candidates for the care of souls, so that if they were to judge otherwise, a judgment that is even clearer and more explicit than that made in the aforementioned case of Ávila, would have no validity, and the subsequent appointment of a parish priest would be declared invalid and void, as Fagnanus states in chapter "De aetate et qualitatibus," number 15: 'When there is doubt as to whether, as the Council of Trent, chapter 18, session 24, assigns the examination of knowledge to the Bishop and the Examiners together, so also does it assign the examination of morals and prudence to them together; so that if the examination of age, morals, and prudence has been made solely by the Bishop, there is no valid proceeding; on August 2, 1607, the Holy Congregation decided: 'If the Examiners do not report those who are suitable in all respects, as the Council requires, there is no valid proceeding.'"

[*Latin ed. p. 373*]

Competition 373. Therefore, when in a competition, of which we are speaking, not only a report is desired, but also an examination of the requirements by which a Priest is to be judged, it was clear that the competition was null.

FROM MATTERS ADDED BY OFFICE. In order to strengthen the rights of the complaining Priest, it is by office noted that, by order of Clement XI, the Holy Congregation of the Council, through encyclical letters given in the year 1721, and again confirmed by Benedict XIV in the Constitution *Cum illud*, among other things, prescribed: "A certain and equal period of time must be established for all, within which the cases are to be resolved,

Translated by churchlatin.ai, a product of Boyne Archives

questions answered, and a treatise composed." Furthermore, those things which were established in these encyclical letters are to be considered as the substantial form, so that whatever is not strictly observed carries with it nullity. On this matter, Reclusius, in *De Concursibus*, page 2, title 4, number 89, wrote: "For the substantial form, those things are to be considered which, by order of the Holy Congregation of the Council, under the authority of Clement XI in the aforementioned encyclical letters of January 1, 1721, and which were confirmed and better explained by Benedict XIV in his Constitution *Cum illud*, have always been prescribed, and which were desired in the Trident Decree and the Piana Constitution. For since the Fathers of Trent and Saint Pius V could not yet have sufficiently provided for: the frauds which could be committed in parochial competitions, Clement XI, at the urging of the Holy Congregation of the Council, introduced other, more numerous requirements for equally observing the form, which were subsequently confirmed or, rather, better explained by Benedict XIV. Thus, these individual elements wonderfully harmonize with each other, and compose, so to speak, one form, far more ancient and better, yet containing the same qualities which were contained in the former; and therefore, even the decree is invalid, and the clause *Sublata* is tacitly understood." Furthermore, Reclusius, in the same work, ibid., number 93: "The prescribed and intrinsic form must be observed accurately in all things, in the greatest and in the smallest, so that if anything is omitted, the act itself becomes null and void by law."

[*Latin ed. p. 374*]

374 Concerning Concurrences: When, in a matter, a certain and equal time frame does not appear to have been established for all those participating, it should be said that there is no concurrence. Furthermore, as stated above in the Constitution *Cum illud*, it is clearly evident that the merits, qualities, and requirements of the candidates must be examined, and not merely their knowledge. Moreover, in this matter, only the knowledge of the priest who was not approved was considered. Furthermore, the Examiners are obligated to make a particular report to the Bishop regarding these merits, and not a general one. Council of Trent, Session 24, Chapter 18, on Reform, and the Sacred Congregation in the aforementioned case of *Abulensi*: they are obligated to make a report even concerning morals, age, and other matters. However, in this matter, no particular report was made to the Bishop regarding the merits or requirements of the priest. Do not say that it was made orally, although it was not written: for it must be made in writing, since it can be appealed against a bad report, as stated in *Cum illud*. If it can be appealed against, the report must be made in writing, so that no opportunity is given for fraud. Furthermore, not only was the report of the qualities not written, but it was not even made orally, nor was there even an examination.

Translated by churchlatin.ai, a product of Boyne Archives

HOWEVER, it has been noted that the Sacred Congregation, in the case of *Civitatis Castelli*, on January 25, 1735, considered there to be a valid concurrence, even though the time had not been predetermined by the Bishop; indeed, in the case of *Militen*, on July 21, 1753, and January 19, 1754, the Sacred Congregation did not consider there to be any concurrence, although the Bishop had granted a longer time frame to two candidates, while others were making their claims. This was also noted in the case of *Verulana*, on January 20, 1770, in these words: "In the case of *Militen*, on July 21, 1753, it was said that no candidates had been accepted, because a longer time frame had been granted to others to complete their duties, but the question was raised: whether it could be established that there was no concurrence; the response was: negatively: with that resolution, the Sacred Congregation declared that it was not pertinent to...

[*Latin ed. p. 375*]

The essence of the competition is that "the same period of time be established for all." This is repeated in the case of Bisinianen, June 22, 1833, § Asserts. Regarding the second point of the question, it has been noted by the court that there exists there an unforgettable custom of not considering the qualities and merits of the Candidates, unless they have previously demonstrated their suitability in terms of knowledge. However, it is falsely alleged that a presumptuous clause has been removed and a decree invalidated, when in fact the Constitutions of Clement and Benedict were not endowed with such clauses; and it is clear that a legitimate custom, which is not unreasonable, especially if it is unforgettable, can abrogate ecclesiastical laws. With these and other considerations, the intention is to resolve the doubt: "Does a competition for a parish constitute a 'case'?"

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on July 20, 1872, judged it appropriate to respond: negatively. A priest, P, requested a new hearing, in order that the case might be presented again; and in this new presentation, he insisted solely on the second point of the question, adhering to the Constitution of Benedict. He affirmed that it is not the learned who should be chosen, but the one who is more suitable; and he sought to apply the method used in his court, thereby overturning the Constitution in which it is prescribed: "Having considered these matters in detail, the Examiners, by vote, reject those who are unfit and present to the Bishop those who are deemed suitable." Regarding the custom, he claimed that it is affirmed, but not proven; and that, if it were proven, it would have no significance, according to Pitonium de Controver. patronorum, book 5, chapter 4, who wrote on a similar argument: "Distinguishing times, either we wish to take the unforgettable custom from a previous period, namely, 'before the Council's decree came into effect,' and this is impossible; 'because at that time it had not yet been introduced into

Translated by churchlatin.ai, a product of Boyne Archives

the Catholic world.'"

[*Latin ed. p. 376*]

376 "It would have been a new form of providing [for the Church] through competition, which originated solely from the very Decree of the Council; consequently, I do not understand how a custom or prescription exclusive of the form of competition could have arisen before the form of competition itself was born... Or do we wish to take from memory something from the past, namely, after the Decree of the Council? And this too is impossible, because once a beginning is given, no further beginning is given [for something to be considered 'immemorable,' but only 'centenarian']; but this [argument] can nonetheless be alleged, because the Decree, by which the Council of Trent and the Constitution of St. Pius V are fortified, so invalidates every contrary act that it does not allow at any time a custom or prescription, even a centenarian, to begin, as commonly affirm Cardinal De Luca, *de iurisdict.*, disp. 95, nn. 7 and 8; Pignatelli, *Consult.* 134, n. 16, vol. i; Garzias, *de Benef.*, par. 5, c. 2, n. 345, *in fine*." *These and other considerations having been presented, the following formula for questioning was proposed before the Sacred Congregation:* "Is it necessary to adhere to, or to depart from, the decisions [in this case]?"

RESOLUTION. The Sacred Congregation of the Council, having again examined the case on December 14, 1872, decided: "In the decisions, and furthermore."

FROM THESE, TOGETHER WITH THE DOCUMENTS PRESENTED HEREAFTER, YOU WILL GATHER:

I. The form of competition and examination in the conferring of parish churches, prescribed in the Council of Trent, session 24, chap. 18, *de Reform.*, must be observed so that provisions for parishes made in any other way are thereby null and void.

II. Such a form can, however, be carried out in various ways within the prescribed dispositions of the same Council of Trent.

1. See Appendix X which follows *in fine*.

[*Latin ed. p. 377*]

III. To eliminate the variety introduced, whereby the Tridentine form was imposed on execution (not without considerable detriment), first the Sacred Congregation of the Council, then Clement XI, and finally Benedict XIV, established suitable rules, by which both multiple damages would be avoided and conformity of method would be induced.

IV. Such rules were not prescribed with the intention of establishing a substantial form, the neglect of which would render the very process of examination or appeal invalid and null.

Translated by churchlatin.ai, a product of Boyne Archives

V. This is evident both from the tenor of the prescriptions of the rules, and from the fact that a clause that would render something invalid, if it were otherwise, would not be included if such prescriptions were not to be observed.

1. There is a plausible reason given by Reclusius, cited above on page 2, title 4, paragraph 84, concerning Examinations; for he wrote: "This decree, which renders something invalid, and this clause, if interpreted otherwise, which are lacking in the cited encyclicals and in the Constitution of Benedict, is as if they had been added to them themselves. Since the Sacred Congregation of the Council, or Clement XI and Benedict XIV, in the aforementioned passages, refer to the aforementioned Council of Trent and the Constitution of Pius V (S. Pius V, concerning Examinations, April 15, 1567). Therefore, it would be absurd to interpret them differently from the text in the law of the Praetor, in the section 'De Iudic. etc.'" Reclusius did not notice that the Sacred Congregation had indeed admitted a certain particular form of examination, but had also prescribed a method of instruction, as can be seen in the answer to the first question in the case discussed on November 16, 1720, which is presented in the following appendix. Nor did he notice that such an instruction was subsequently issued at the order of Clement XI, containing these words: "He urges all and each Bishop... not to burden themselves with the institution of such an examination, etc." Nor did he notice that the Constitution of Benedict refers almost entirely to the instruction of Clement XI, which it explains more fully. Therefore, one could argue against Reclusius in this way: it would be absurd to interpret them differently from the text; but Benedict XIV refers to the instruction of Innocent XI, which consists entirely of an exhortation; therefore, the Constitution of Benedict consists of an exhortation. I admit that this conclusion is false, for Benedict XIV not only urged, but also prescribed a certain order of things, which he had recognized as useful through long experience; but these words, although imperative, are not of such a nature that they could be equated with a clause that would render something invalid.

Reclusius did not notice that a law or decree could be referred to another for multiple reasons. A law can be referred to another by interpreting and innovating, as the aforementioned Constitution of St. Pius V is referred to the disposition of Trent, and in that case, this law easily takes on the nature of the other; but it can also be referred to another by explaining a certain method, by which this other law is more suitably imposed for execution, in which case the law does not take on the nature of the other, but determines one method of execution over another.

[*Latin ed. p. 378*]

378 VI. In order for a competition to be declared invalid and null, it is necessary to demonstrate, for example, that the rules were not observed due to deceit and fraud, since deceit and fraud are owed to no one; or that

Translated by churchlatin.ai, a product of Boyne Archives

the rules were neglected to such an extent that the *Tridentina* form itself was disregarded.

VII. Consequently, a custom can also arise contrary to such rules; and it cannot be said that a custom is unreasonable merely because it is contrary to the aforementioned rules.

VIII. In a judicial proceeding instituted regarding the nullity of a competition due to a defect in form, neither deceit nor fraud was proven, although some irregularities may have occurred.

IX. It was not shown that the *Tridentina* form was disregarded, since it is one thing to prove something based solely on knowledge without the required examination, as they say; and it is another thing to fail to conduct the required examination, because someone, through a certain degree of suffrage, did not reach the level that other candidates achieved.

X. In this case, the opposite of what the *Tridentina* form states was not demonstrated, namely: that after the examination, all those who are deemed suitable in terms of age, morals, doctrine, prudence, and other qualities appropriate for governing the vacant church should renounce; it does not determine whether a candidate is more or less suitable, so that they must or must not renounce among the approved candidates.

1 2 1. This was defined by the Sacred Congregation in the case discussed on August 2, 1607, as reported by Benedict XIV in his work on Diocesan Synods, and which I mentioned above from the testimony of Fagnani. Thus, for example, it is sometimes the case that someone who does not enjoy a good reputation, whether justly or unjustly, is not admitted to the competition, because it cannot then be proven that they are suitable, as was the case in the competition held in *Trivento*, discussed in the Sacred Congregation on March 30, 1743. In that case, it was about a priest who was already very involved in the care of souls and who also had excellent testimonies in his favor regarding his integrity of character, his constant service to the Church, and other merits. The bishop did not admit him to the competition because certain faults had been publicly attributed to him, although they were not proven. The proposal was: 2

[*Latin ed. p. 379*]

379 XI. Indeed, Benedict XIV permitted that, in order that the doctrine be closely associated with expenses, those who are unable to do so should be rejected by all, and the suitable ones should be presented to the Bishop; nevertheless, he established that the first judgment regarding knowledge should be made by the examiners, as stated in the words: "After they have diligently examined and discovered in what each one excels..." and after careful consideration, etc. XII. Given that this is the case, and with the addition of an unforgettable or long-standing custom, which has determined the form of the examination in such a way that he who has not attained a

Translated by churchlatin.ai, a product of Boyne Archives

certain degree of knowledge that others have attained, should, by that very fact, not be included among those to be approved, the question raised for this reason regarding the nullity of the examination should be judged to not consist of nullity. 1 APPENDIX X. All documents by which the method is prescribed, by which the execution of the Tridentine decree concerning the examination in the collation of benefices should be ordered, are included. It frequently happens that those who are engaged in the practical application of the canons regarding their office, while indeed following the canonical provisions in practice, if, at times, something new arises which disturbs the customary order of execution, they become so entangled in difficulties that they seem unable to find rest, unless they find a practical example to which they can somehow adapt themselves. This method of seeking compliance is commendable, if the example is sought and found in the source from which the unity of discipline derives, that is, from the acts of the Apostolic See, with the doubt: "Does the nullity of the examination exist?" The response was: negatively. Also, in Trent, December 7, 1720. Furthermore, note that to judge the examination to be valid is one thing, and to judge that its nullity does not exist is another; these two things differ greatly. For, once an act has been performed, one must stand by the validity of that act, as long as it is not demonstrated to be invalid. 1

[*Latin ed. p. 380*]

Appendix 380: This [practice] will demonstrate a prudent course of action and will show a closer communion with the Apostolic See. But there are those who seek examples from other sources; which may indeed be useful, but not always. However, if we turn our attention to those who have been masters of practical matters, we will find everywhere that the true, proper, and easiest way to free oneself from such difficulties lies in inquiring from whence the practice originates; that is, from which Decree or Constitution; once this is discovered, its intensive and extensive force must be applied according to the rules of law. If this is done, the difficulties that arise are often not only avoided, but rather are desired, since, from a certain satisfaction of the mind, they are easily resolved. Therefore, to overcome the difficulties that are easily overcome, which are not infrequently encountered in practice when it comes to the concurrence [of jurisdictions], which must be preceded by the disposition from Trent, one must consult the documents that have been issued by the Holy See after said Tridentine disposition, and the motives of those documents must be considered, and their force ascertained: which will not be difficult if such documents are kept before one's eyes and read carefully. After the Tridentine disposition, session 24, chapter 18, concerning reforms, Saint Pius V, in order that the same disposition might not be neglected, especially since, although a proper examination was maintained, parishes were repeatedly assigned to people who were less suitable because of some human passion,

Translated by churchlatin.ai, a product of Boyne Archives

decreed the following, declaring the Tridentine disposition to be invalid under a penalty, and to some extent innovating: PIUS, BISHOP, SERVANT OF THE SERVANTS FOR THE EVERLASTING MEMORY OF GOD. "The Constitutions issued by Alexander III in the Lateran Council, by Gregory X in the Council of Lyons, and also by Innocent III and other Roman Pontiffs who preceded us, testify to the diligence that should be used in assigning ecclesiastical and especially parochial benefices to worthy and capable persons who are able to reside in the place and to exercise care themselves."

§ 1. "In order that this may be accomplished more diligently and correctly, the Council of Trent also decreed that, when a parochial church becomes vacant, either generally or specially, even by virtue of an indulgence in favor of the Holy Roman Church, or otherwise reserved or affected, the Bishop, having knowledge of the vacancy of the church, if it is necessary, should appoint a suitable vicar in it, with a proportionate assignment of fruits and portions according to his judgment, who will sustain the burdens of the church until a pastor is provided for it, and then the Bishop, and he who has the right of patronage, within ten days, or another time determined by the Bishop..."

[*Latin ed. p. 381*]

Appendix X 381: It is prescribed that certain clerics, deemed suitable to govern a parish, be appointed by the Ordinary, with examiners designated according to the form of this Synod; and that provision be made for the parish only by these same examiners, with the concurrence of other examiners, even if the Bishop has judged and chosen someone as more suitable, otherwise all provisions or appointments made outside of this prescribed form shall be considered invalid.

§ 2. But since human affairs always deteriorate unless someone maintains them and demands their proper execution, and it is feared that, due to the transgression of such constitutions, the greatest abuses may arise: We have learned, to our great concern, that some of our venerable brothers, Archbishops and Bishops, upon the occurrence of vacancies in parish churches, have, without proper examination, especially that which must be carried out with the concurrence of others according to the Council of Trent, or even with a properly conducted examination, appointed individuals less worthy, influenced by carnal desires or other human passions, not following the judgment of reason, and have provided for them. We desire, as far as in us lies, to address these and future dangers.

§ 3. Therefore, amending the aforementioned constitutions of our predecessors, by the authority of the Apostolic See, by these present enactments, all and each appointments, provisions, installations, and any other dispositions concerning parish churches made by these same Bishops and Archbishops, and by any other collators, whether ordinary or delegated, including Cardinals of the Holy Roman Church and Legates or Nuncios

Translated by churchlatin.ai, a product of Boyne Archives

of the Apostolic See, which are made or are to be made outside of and contrary to the form prescribed by the same Council of Trent, especially in the examination carried out with the concurrence of others, shall be null, void, and of no force or effect, and shall not confer any right or title, even in appearance, to possess such parish churches; and we decree and declare that such parish churches, as they were vacant before these invalid appointments, shall now be considered vacant; and we reserve all of them, for the time being, to Ourself and the Apostolic See, or to those to whom the right to confer them has been granted, except for Bishops and Archbishops, who are required to take care of the aforementioned examination according to the decree of the same Council, reserving the disposition thereof.

§ 4. Furthermore, so that parish churches may not remain vacant for too long to the great peril of souls, concerning any parish churches of which, while temporarily vacant, provision and appointment pertain to Bishops, Archbishops, Patriarchs, and any other Ordinaries, as collators, according to our regulations, and concerning which the aforementioned Bishops and Ordinaries have not made provision within six months from the day of the vacancy of the same, after a proper examination according to the form of the Council of Trent, and concerning those also of which the appointments are generally or specially reserved to Us or to the aforementioned See for any reason, or to others by the grace of the Apostolic See...

[*Latin ed. p. 382*]

382 Appendix X. These [offices] pertain to them, and if, upon the occurrence of their vacancy, the aforementioned Bishops and Archbishops do not, through mutual consultation, select persons who, after examination according to the approved form of the aforementioned Council of Trent, are deemed more suitable, or if they do not, within a period of four months from the date of the vacancy, notify us or our successors, or those to whom the collation pertains, of their intention to proceed with the collation, and also concerning parochial churches of a similar nature, which have been under ecclesiastical, or lay, or clerical and lay patronage, if a presented candidate, approved after prior examination by the aforementioned patrons according to the form approved by the aforementioned Council, is requested to be instituted, and the institution is delayed by two months from the date of presentation, we reserve to ourselves and to the Holy See, and to those empowered to confer, provide, or institute in such matters, respectively, the collation, provision, institution, and all other dispositions; provided, however, that in the case of parochial churches under patronage, the patrons shall have the option to appeal, if the institution pertains to the Ordinary, to the Metropolitan, or the nearest Ordinary, or to the Apostolic See, if the Ordinary neglects to perform the institution and, beyond the aforementioned months, is unable to obtain such an institution.

§ 5. We also strictly forbid these same Ordinaries from daring to pro-

Translated by churchlatin.ai, a product of Boyne Archives

long, beyond the ten days prescribed by the same Council of Trent for the Ordinaries and patrons to nominate suitable clerics before designated examiners, by more than another ten days.

§ 6. We strictly prohibit anyone, except the Roman Pontiff, or those who have been granted similar powers, as mentioned above, whoever they may be and whatever authority they may possess on this matter, from disposing of such reserved benefices in any way, or from making any changes or innovations concerning them, as they may presume.

§ 7. In order that parochial churches may be conferred upon not only worthy, but also more suitable candidates, according to the decree of the same Council, we also decree, with the same authority, that if a Bishop chooses a less capable candidate after having set aside more suitable ones, those who have been rejected may appeal from this improper election to the Metropolitan, or, if the Bishop himself who is making the selection is the Metropolitan or exempt, to the nearest Ordinary, or to our delegate, or to the Apostolic See; and they may challenge the pre-elected candidate to a new examination before the judge of the appeal and his examiners, and if it is established that the previous selector acted irrationally, and that selection is revoked, the parochial church may be conferred upon the more suitable candidate either by the authority of the same judge of the appeal (to the extent that the collation pertains to the Bishop from whom the appeal was made), or, if the more suitable candidate is approved by the judge of the appeal, the matter shall be remitted to the one to whom the collation, provision, or institution pertains.

§ 8. However, this interposed appeal shall not impede or suspend the election made in the first instance by the Ordinary.

[*Latin ed. p. 383*]

Appendix X 383. In the interim, the debt shall be demanded for execution, and the provision made by the same Church, while this appeal is pending, shall not be revoked. "§ 9. And if anyone, having considered a sentence pronounced by the judge of appeals, deems it necessary to appeal, he shall then appeal to the Apostolic See. If anything else has been done or attempted in all and each of the foregoing matters, we declare it null and void. We decree that a copy of the present document be given to someone by the hand of a notary, etc. Given in Rome, at St. Peter's, in the beginning of the year, on the 15th day before April, in the year 1567, in the second year of Our Pontificate." This entire Constitution aims to ensure that, through careful observance of the dispositions of Trent, the purpose of those dispositions is effectively achieved. This effectiveness, in achieving the intended purpose, was established by St. Pius V, first in reserving parishes vacant to the Apostolic See if they had not been conferred according to the proper form, in order to punish the negligence of the bestowers; second, in the right of appeal, if they were not conferred upon those more suitable, in or-

Translated by churchlatin.ai, a product of Boyne Archives

der to correct the unreasonable judgment of the Examiners or the bestower; and finally, in the reservation, if they were not conferred within the prescribed time. But since the form of the concurrence or examination was not explicitly determined by the Council of Trent, and the same examination could be carried out in various ways, it happened that, while it had been consulted in the Constitution of St. Pius V, that parishes should not be conferred upon those less suitable, a gradual path was opened for querulous and ambitious priests to undermine or put even the reasonable judgment of the Bishop in jeopardy. This was the reason why the Holy Congregation of the Council reviewed the entire matter again. Therefore, in a certain case concerning doubts about the concurrence, proposed on October 1, 1720, the Holy Congregation committed the matter to the Secretary of the same Holy Congregation (who at that time was Lambertini, later Benedict XIV), to discuss this matter, and the discussion is that which follows. "Discussion of the Secretary concerning appeals, which are interposed either due to a bad report from the Examiners or due to an unreasonable judgment of the Bishop in the provision of parochial churches through concurrence." "1. In order to proceed in a proper manner, it is first necessary to explain what is established by law in this matter of appeals; then it is necessary to discuss the practice received both in this Holy Congregation and in the Tribunal of the Rota; further, the inconveniences and prejudices that are said to derive from this practice; and finally, the remedies that seem to be able to be prepared against the alleged inconveniences and prejudices. 1 1. If you wish, compare the cases of this kind that you have in Vol. IV, page 423 and following, and in Vol. II, page 67 and following, and there, page 74 and following, and in Vol. I, page 169 and following, although in these, not everything is accurately discussed according to the current practice of the Registry, but according to the old practice, as I will note in reference to the Constitution of Benedict XIV."

[*Latin ed. p. 384*]

384 Appendix X « 2. Furthermore, from the beginning, based on the disposition of the law, it is known that the Holy Council of Trent, session 24, chapter 18, concerning Reform, introduced a new form in the appointment of pastors; for it willed that there be a competition, that the candidates be examined by the Bishop, or by his General Vicar, and by synodal examiners, not fewer than three; that the Bishop choose him whom he judged to be more suitable among the others, taking into account age, morals, doctrine, prudence, and other qualities that are appropriate for governing a parish church; and that the report of the examiners could not be impeded or appealed, even to the Apostolic See, in a suspensive manner. Moreover, it is also known that Saint Pius V, in his constitution *In conferendis*, in order that not only worthy, but also more suitable individuals be appointed to parish churches, decreed that if the Bishop should choose a less capable

Translated by churchlatin.ai, a product of Boyne Archives

person, after having set aside more suitable candidates, those who had been rejected could appeal to the Metropolitan, or to the Apostolic See, from this improper election, and could challenge the chosen candidate to a new examination before the judge of the appeal and his examiners, and could obtain a judgment regarding the unreasonable judgment of the former selector, and, with that judgment revoked, that the parish be conferred upon the more suitable candidate; and that, finally, the appeal interposed in the meantime should not impede or suspend the execution of the election, which had been made in the first instance by the Ordinary. All of this is read in §§ 7 and 8 of the aforementioned constitution; therefore, after the aforementioned constitution, the controversy ceases, which formerly existed, namely, whether an appeal could only be made from the rejection of the examiners, or also from the election and judgment of the Bishop; indeed, the appeal from the election and judgment of the Bishop is expressly admitted in the aforementioned Pius constitution, as Fagnan rightly observes, in chapter *Eam te, a num.*, from 24 to 29, concerning age and quality. « 3. Turning to practice, this is explained by the following assertions. « 4. The first is that the one appealing from a bad election by the examiners, or from an unreasonable judgment of the Bishop, can challenge the chosen candidate to a new examination, without having to present any document regarding the unreasonableness, or any proof thereof. Thus, it was decided by this Holy Congregation in a certain case from Pistoia, on June 12, 1603, and the resolution is printed in Fagnan, in the attached chapter *Eam te, num.*, 31, concerning age and quality, where, after the Holy Congregation considered the Pius constitution, it permitted the appellant to challenge a new examination, and after it decreed that a judgment regarding the unreasonable judgment of the Bishop selecting should be obtained, the parish being conferred upon the more suitable candidate, it adds, speaking of the aforementioned constitution: It manifestly requires a new examination to ascertain such an unreasonable judgment, so that it is not necessary to prove it beforehand before the examination is ordered, but that, without such proof of an unreasonable judgment, the examination should be ordered, so that through the examination, knowledge of the unreasonable judgment may be obtained. Another [assertion] agrees.

[*Latin ed. p. 385*]

Appendix X, 385, resolution concerning the case of Monreale, 2nd of August, 1607, book 11, Decretals, page 11, where, in response to the fourth question posed, it is stated: "Regarding the fourth point, it is possible for the appellant to request a new examination before the Judge of Appeals, and to present, before doing so, other documents demonstrating the unreasonable judgment of the Bishop; and thus, the Congregation understood the Constitution of the Most Holy Pope Pius V."

5. Furthermore, it is noteworthy that, although previously the Rota had

Translated by churchlatin.ai, a product of Boyne Archives

held the opinion that proof of harm was required before being admitted to a new examination, yet, considering the resolution in the case of Pistoia, in which three Cardinals, Blanchettus, Mantica, and Plattus, who had previously been Auditors of that tribunal, participated, the opinion changed, and it conformed to the opinion of the Sacred Congregation, which requires no proof of harm for a new examination, but rather grants it absolutely and simply as soon as anyone appeals in a parochial matter, as can be widely seen in decision 5, throughout, and especially in numbers 10 and following, before Cardinal Celso, in decision 476, paragraph 18, volume 2, recent, in decision 64, number 14 and 15, before the Most Reverend Ansala, in decision 9, number 3, in decision 10, numbers 4 and following, after Monacelli, in the legal formula, volume 4, in Luenen, Sarsanen, Parochial, 2nd of July, 1706. "It does not impede"; and in the Commentary on Parochial Matters, 18th of May, 1706, § Clara, before the Most Reverend Omanna; and in the Commentary on Parochial Matters, 1st of March, 1720, § Aut revelante, before the Reverend Father D. Cerro, which extends even to the case in which no appeal has been interposed within the legitimate time against the unreasonable judgment of the Bishop, or against a false report from the Examiners, as testified by Cardinal de Luca in Parochial Disputations, 6, number 8.

6. Secondly, it is permissible and allowed for the appellant to request that the elected candidate be subjected to a new examination, even if the appellant has been approved in the same degree of knowledge as the one to whom the parochial position has been granted; primarily for the reason that the appellant can argue that he himself should have been qualified as more learned, or that another should not have been qualified as suitable, as is stated in the Commentary on Parochial Matters, 10th of January, 1707, § It does not urge, before the Most Reverend Caffdrello, and in the aforementioned Commentary on Parochial Matters, 1st of March, 1720, § Coaequalis, before the Reverend Father D. Cerro.

7. Thus, there is no other way for the elected candidate to avoid a new examination, except by demonstrating that the appellant and one who requests a new examination has been defamed of some crime; in these terms, the resolutions of this Sacred Congregation proceed in Milan, or Alexandria, Concursus, 28th of November, 1693, book 43, Decretals, page 586, and 13th of February, 1694, book 44, Decretals, page 60, verso, and in Cassanen, Archpresbyterate, 3rd of October, 1716, book 66, Decretals, page 439, verso, and the Cardinals De Luca, in Parochial Disputations, 8, numbers 5 and 6, the Reverend Father D. Ansala, in the addition to decision 64, number 30, and in the addition to decision 32, number 70, affirmed, and the Rota affirmed, in decision 311, before Priolo, and in decision 10, number 11, after Monacelli, in the legal formula, volume 5, and this is recorded in the Acts,

Translated by churchlatin.ai, a product of Boyne Archives

volume VII, page LXXIX, 25.

[*Latin ed. p. 386*]

386. Appendix X states that, for this reason, it is said that just as the crime of defamation can never affect the parish church, it seems equally evident that the elected candidate himself cannot, at his own discretion, demand a new examination.

8. Thirdly, although it is legally stipulated that the examination to which the elected candidate is summoned must take place within a brief period, so that the rejected candidate does not become more learned through the passage of time, as is well noted in Ventriglia, *In Pratica Rerum Ecclesiasticarum Parochialium*, 2, annotation 5, § 2, numbers 55 and 56, in practice this is often not the case; indeed, it is commonly admitted that an interval of one year, and sometimes even twenty months, may pass between the first and second examination, especially if the one making the appeal is outside the ecclesiastical jurisdiction, or if the intervening time is necessary for judicial proceedings, and particularly in the dispute that immediately arises between the appellant and the appellee, regarding whether there is indeed grounds for a new examination, as Lotter observes in *Ciere Beneficiorum*, Book 2, Question 31, number 155, and as the Rota affirms in the aforementioned decision 32, number 9, and following, and in decision 64, number 25, *coram* the esteemed Ansaldo.

9. Fourthly, concerning the procedures of the Bullae [Pia], the new examination must take place before the judge of the appeal and his examiners; and thus, if the appeal is made to the Apostolic See, the new examination takes place in the city [Rome], before the examiners of the Most Eminent Cardinal Vicar, so that neither the advancing age of the candidate being examined, nor the distance of the location from the city, even if he were to reside outside the city walls, can excuse him from coming to the city to submit to the new examination, as noted by the Reverend Father Ansaldo in the addendum to decision 32, number 69, and as affirmed by the Rota in decision 5, number 14, *coram* Cardinal Celso, and in decision 10, number 14, following Monacella in *Formularum Legalium*, volume 4. The Most Reverend Fathers will also recall that in a certain case concerning the parish of Ischia, which was presented on July 23, 1718, and in which it was debated whether there was grounds for summoning the candidate for a new examination in the Curia, the response was affirmative, and the inquiry was made as to whether a *concursus* had ever been delegated in that region; the case concerned a poor and elderly candidate; after reviewing the records, it was found that in a certain case in Meissen, on June 21, 1642, *liber* 42, *decretorum*, page 381, an examination had been assigned to a neighboring bishop, but because of the fear of the plague then raging in the city of Meissen, the resolution was deemed inapplicable, and the case was reopened on September 24, 1718, and it was decided that the examination

Translated by churchlatin.ai, a product of Boyne Archives

should take place in the city, and that the delegation of the examination to a region is only permitted in parishes under lay patronage, and in other benefices that require an examination, and not a *concursus*, as is widely stated in decision 348, number 9, paragraph 10, in the recent decision 307, throughout, and particularly in numbers 6 and 7, *coram* Celso, and in decision 10, numbers 13 and following, and especially number 16, following Monacella in *Formularum Legalium*, volume 4.

[*Latin ed. p. 387*]

Appendix X 387 « 10. The fifth point is that a single new examination is not sufficient, but rather, according to practice, a second and third examination must be held, and in these, the candidate must not be rejected unless, through three uniform examinations, it can be definitively determined that he is either of sufficient learning or lacking in it, as is fully stated in Decree 10, number 10, after Monacell, in the formulas, volume 4. And for a more complete explanation of the practice, it is worthwhile to note that if a candidate, having been chosen by the Bishop in a competition and challenged to a new examination, is rejected twice, he is admitted to a new examination, because deficiencies in successive examinations are considered to be due to accidental illness of body or mind. And in order to legally or judicially remove a possessor, three uniform judgments are required in the ordinary and appellate courts. However, if a candidate, having succeeded in two successive examinations before the Bishop, then succeeds in a third, then, by law, there is no place for a fourth examination. But, out of a certain equity, it has been introduced that a fourth examination may also be granted, as is widely affirmed in the Piacentine Pastoral of March 16, 1708, number 7 and following, printed before Monacell, in the formulas, volume 4. « 11. Finally, the last assertion is that, once the examination has been judged, it cannot be said that the judgment regarding the assignment to the parish is absolute; for the more learned is not necessarily more worthy, and someone might be less learned, but more suitable for a parish church; therefore, after the examinations have been completed, a question must be raised regarding the assignment to the parish, and therefore regarding the requirements of each candidate, and then it must be clearly and definitively demonstrated through conclusive proofs that the Ordinary has chosen a less worthy candidate in comparison to a more worthy one, and these are the words of the Bull of Pius: 'I decree that, if the judgment of the prior in choosing is unreasonable, and that judgment is revoked, the parish should be assigned to the more suitable candidate,' and Ventrigl. in *Praxi Rerum Eccles.*, part 2, year 5, § 2, numbers 53 and 54, Garzias, on benefices, paragraph 9, chapter 2, number 252, Monacell, in formulas, volume 2, title 15, numbers 20 and 21, Rota, in *Limen. Sarsanen. Parochialis*, July 2, 1706, § *Neque obstare coram bon. mem. Omanna*; and Decree 10, number 4 and 5, after Monacell, in formulas, volume 4. «

Translated by churchlatin.ai, a product of Boyne Archives

12. Having explained the practice, according to the method suggested, it is necessary to speak of the inconveniences and prejudices that are said to arise from this practice. Some of these relate to the disposition and order of the law, some to the dignity of the Bishop, and some to the damage to the parishes themselves and to the parishioners. « 13. Regarding the disposition and order of the law, it is said to be harsh and very harsh that, if the presumption of the law is in favor of the Bishop's judgment, and this is contradicted, a challenge to a new examination is then admitted, not only without any proof, but also without any hint of unreasonableness in the Bishop's judgment; and even more so, when from the new examination, only a greater or lesser degree of learning is determined, when it is certain that a greater degree of learning is not sufficient to obtain...

[*Latin ed. p. 388*]

388 Appendix X Parochiali, so that it may be possible for a case to arise in which the Bishop, acting rightly and properly, has preferred a less learned candidate to a more learned one, from which the less learned candidate might lack the other necessary qualities for the governance of souls; as, in this matter, Cardinal de Luca, in his work *De Parochis*, discourse 9, numbers 3 and following, states.

« 14. Therefore, the Doctors say that this appeal for a new examination, even if it results in a favorable outcome, whereby the appellant remains approved and is even deemed more qualified, does not in any way suffice for obtaining the parish; but it serves only to avert the stigma and infamy of rejection, or of an approval reported in a second instance after a first examination, as Ventriglia states in *Praxis Ecclesiastica*, part 2, note 5, § 2, number 48, and following; and the Rota, in its decision 10 under number 9 after Monacelli in the formulas, volume 4, also states this. »

« 15. Regarding the reputation of the Bishop, it should be noted that the one who appeals for a new examination and obtains approval in the second and subsequent examinations, generally does obtain the parish, and the tribunals of the City have responded that there is proof of an unreasonable judgment by the Bishop, so that the parish should be granted to the appellant. However, the assertion that there is proof of an unreasonable judgment by the Bishop prejudices the reputation of the Bishop, and indeed, as some say, without foundation or reason; for it should be established from the acts of the competition held before the Bishop, and not from the new examination, because, just as it is possible for someone to answer poorly in the competition held before the Bishop, and answer well in the competition held before the judge of appeal, so it is possible that the Bishop's judgment was reasonable, despite the approval reported by the appellant in the second examination; in this matter, it is often answered, without foundation or reason, and with prejudice to the dignity of the episcopacy, that there is proof of an unreasonable judgment by the Bishop; and this is

Translated by churchlatin.ai, a product of Boyne Archives

all the more so because, whether by design or by accident, a considerable amount of time often elapses between the Bishop's examination and the examination before the judge of appeal, during which time the rejected candidate can learn, and experience testifies that rejected candidates do learn, being instructed, as they say, especially in the City, by a man skilled in moral theology and in cases, so as to improve their conscience. »

« 16. Finally, regarding the damage and prejudice to the parochial churches and their parishioners, it is not to be doubted; for after the elected candidate has obtained possession of the parochial church in the competition, if he is appealed to for a new examination, he must leave the parish, he must go to the judge of appeal, and generally to the City, and he must, by necessity, not leave the City, nor the place of judgment, until the judgment of the new examination is completed, which, as stated above, admits of three or four instances; in this matter, whether the damage to the parochial churches and their parishioners is contained or not— »

[*Latin ed. p. 389*]

Appendix X 389, each one can easily gather, both from the law of residence imposed on Parish Priests for the benefit of their churches and parishioners, and from the sacred canons, which oppose the prolonged absence of churches due to the damage that results to them and their parishioners from the interim residence of Economists and Vice-Curators.

« 17. After explaining the legal provisions regarding these appointments, as well as the practice of both this Sacred Congregation and the Tribunal of the Rota, and also the inconveniences and prejudices that are said to arise from this practice, there remains nothing but to propose remedies that seem to be able to be prepared against the alleged inconveniences and prejudices.

« 18. Therefore, proceeding to the matter, it must be stated that many competitions are held in the City: not only are they held for the parochial churches of the City, but also for those parochial churches that are vacant in the Patriarchal obedience, as well as for all other parochial churches in which an appeal for a new examination is admitted.

« 19. Before the blessed memory of Innocent XI, certain cases of moral theology were proposed orally by the Examiners, and the Candidates answered orally and not in writing, and not the same cases were proposed to all Candidates, but some cases to one, and others to another; and since frequent complaints were heard; for one of the Candidates asserted that he had been given more difficult cases, and another that he had been asked about easier ones; and what is more noteworthy, in a large number of Candidates, and indeed those answering orally, it was very difficult for the Examiners to form a judgment about the knowledge of each one. Therefore, in the time of the blessed memory of Innocent XI, a practice was introduced in the Tribunal of the Most Eminent Vicar of the City, whereby the same

Translated by churchlatin.ai, a product of Boyne Archives

questions were entirely proposed to all Candidates; that all Candidates, within the time assigned to them, should answer not orally, but in writing, and that they should also, equally in writing, write a short discourse on the text of the Gospel assigned to them, excluding the more recent custom of explaining the Council of Trent; so that, from the answers given in the Latin language by the Candidates, answering in writing to the questions proposed, it may be well determined whether they are lacking in the Latin language, and thus whether they have the capacity to understand and explain the Council of Trent; and this method, whereby the same questions are entirely proposed to all Candidates, and they answer in writing, is required by the Apostolic Datary, when a parochial church is vacant in the Episcopal or Archdiocesan See, when a vacancy occurs in any parochial church, according to the Decree, and when any higher office is vacant in a collegiate or cathedral church, to which a pastoral care is attached, about which there was formerly a dispute, whether it should or should not be conferred through a competition, as extensively explained by Fagnan in chapter "Cum sit ars," nos. 19 and seqq., concerning Kosso.

[*Latin ed. p. 390*]

390 Appendix X, concerning age and qualifications. Indeed, Our Most Holy Lord willed and decreed that, when a vacancy occurs in a cathedral or collegiate church to which the care of souls is attached, a letter should be written by the Most Eminent Prothonotary to the Ordinary of the place, indicating the vacancy, and that the proceedings of the competition should then be transmitted. And the method of finally proposing the candidate to all, and of demanding a written response, is practiced in many dioceses, but not in all; for example, in Bologna and Perugia, an oral examination is still held, and the candidates do not respond in writing.

20. It must also be noted that a challenge to a new examination has been admitted without any proof of grievance, to the extent that, since the candidates do not respond in writing, it is not possible to infer a grievance from the records of the first competition, and therefore no other means remains of ascertaining whether the person who was rejected in the first examination was rightly and justly rejected, other than by ordering a new examination. In this matter, proof of grievance before the examination does not seem to be required, according to the interpretation of the text in chapter 6, concerning elections: "If, among other things that are objected to the elected, or proposed, or otherwise promoted to some dignity, a clear defect of knowledge or another personal defect should arise, in the discussion of the objections, we establish an unchangeable order, that the person to be promoted should first be subjected to an examination concerning that very defect, the result of which will either give rise to further examination of other matters, or will preclude it." And in other words, that a challenge to a new examination is admitted without any proof of grievance, from

Translated by churchlatin.ai, a product of Boyne Archives

which a grievance cannot be inferred from the records of the first instance, is affirmed by Pax Jordan., lucubrat., book 10, title 8, number 227; Lotter, de re Benef., book 2, question 31, number 155; Garzias, de Benef, paragraph 9, chapter 2, under number 250; Gonzal., ad regul. 8, Cancell. gloss. 4, number 144. And that a challenge to a new examination is admitted only to the extent that there were no questions and answers in the records of the first competition, is affirmed by the Rota, before Ludovic., decision 538, number 3, where it is stated: "In order to demonstrate a grievance, there is a place for a new examination, which is a means of attending to injustice and inequity on the part of the Examiners, which is all the more true in this case, in which the questions and answers were not described, or at least were not transmitted and produced, so that, since it cannot appear from them that there was a grievance, if it could not be demonstrated from elsewhere, the right of appeal would be futile." And the Rota, decision 5, number 11, before Celso, states: "And the Lords are inclined in this direction all the more, because in the records of said competition brought to the Curia, the complete examination does not appear, so that it is not possible to determine who is to be judged more suitable." And compare what is reported among the Authors, and is found in the records, in which something is established or reported concerning these competitions: as is the case with Fagnan in chapter...

[*Latin ed. p. 391*]

Appendix X 391, number 48, concerning age and qualifications, it should be noted that in the Diocese of Pistoia, there is no custom of writing down the questions asked by the Examiners and the answers given by the Candidates. Furthermore, in the records of the Church of Milan, mention is made several times of examinations being conducted as part of the proceedings of the Council of Trent, specifically concerning the appointment of parochial clergy, namely in part 1, pages 14, 120, and 215. However, nowhere is there mention of writing down the questions and answers. Moreover, in a book published in the Archiepiscopal See of Bologna by the esteemed Cardinal Gabriele Paleotto, part 4, title concerning the method of examination, it is expressly stated that the questions are asked orally, and the answers are given in a similar manner. Nevertheless, our Synod deems it necessary to ensure that when more candidates present themselves for examination, those who submitted their names first are admitted first, or, if it is more expedient, all candidates are convened together before the Examiners, so that each candidate is questioned in the presence of all, and if it seems more appropriate, individual Examiners may ask something of each candidate, always with the understanding that, among those being examined, as much equality as possible is observed, and that each candidate is examined on the same subject and through the same questions, so that all collusion, or prior

Translated by churchlatin.ai, a product of Boyne Archives

instruction, is eliminated under the penalty of perjury. Furthermore, from the records of the candidates, which are preserved in the archives of the Sacred Congregation, and especially from the records of older examinations, it can be inferred that the questions and answers were given orally, with the only difference being that in some records, it is only noted that Titus, for example, was approved by the Examiners, and Caius was rejected, while in others, the questions are given in full, and the answers are written down by the Secretary, who transcribed them from what the candidates said orally. Consequently, by writing down the questions and answers in this manner, assistance may be given to one candidate and prejudice to another, either intentionally, which is not to be believed, or accidentally.

21. Assuming that the examinations held in the City, and those transmitted to the Apostolic Datary, are conducted in such a way that the same questions are asked of all candidates, and that the answers are written in the proper handwriting of each candidate, it seems advisable to: first, to order that all examinations be conducted in this manner; second, to establish a time limit within which the candidate who was rejected must appeal; third, to further decree that the appellant must demonstrate the grounds for his appeal based on the records of the first examination, before a new examination is ordered (for indeed, if there are valid grounds, the appellant can readily demonstrate them from the records of the first examination, in which, as is assumed, both his own and the other candidates' answers are contained, and indeed written down in each candidate's own handwriting); and finally, to order that the appellant, not based on grounds presented in writing, but based on the preponderance of his own qualifications, should demonstrate, if he can, the grounds for his appeal.

[*Latin ed. p. 392*]

392. Appendix X. Men, either from the records of the inquiry or from other sources, and even from extrajudicial documents, must be presented before an appeal is admitted; it seems to me that, in this way, all prejudices and inconveniences would cease, and nothing would be done contrary to the Council of Trent, or the Papal Bull, nor contrary to the opinion of the Sacred Congregation or the Rota. "22. That all the aforementioned, by being demanded, would cease prejudices and inconveniences, is evident; because if a presumption exists regarding the judgment of the Bishop, as long as the contrary is not proven, this is entirely verified in the case now under consideration, since neither a request for a new examination nor an appeal is admitted, unless the gravity of the matter is demonstrated. Again, if it is considered inconvenient that a response be given without foundation and reason, which is evident of an unreasonable judgment of the Bishop, from which the Bishop could reasonably believe that someone, after being examined before him, should be condemned, who then, in subsequent

Translated by churchlatin.ai, a product of Boyne Archives

examinations, deserves approval, this absurdity cannot find any place in the present situation, since the very irrationality of the judgment, with regard to the evidence, is largely derived from the examination completed before the same Ordinary. Finally, if the absence of witnesses causes great detriment, both to the churches and to the parishioners, this absence will not be so frequent, not only because the frequency is determined by the time limit for filing an appeal, but more importantly, because, given the law imposed that the gravity of the matter must be proven from the records of the first inquiry, before a request for a new examination is admitted, requests for a new examination will not be so frequent, and therefore the absence of witnesses, which arises from a request for a new examination, will not be so frequent. "23. Furthermore, that all the aforementioned, by being demanded, nothing is done contrary to the Council of Trent or the Papal Bull, is recognized, because an appeal from a bad report of the Examiners, and also from an unreasonable judgment of the Bishop, about which matters the Council of Trent and, respectively, the Papal Bull speak, is protected; and certain conditions are added to it, so that the appeal may be properly and justly admitted. "24. Finally, that nothing is induced through the method suggested contrary to the opinion of this Sacred Congregation and the tribunal of the Rota, is clear, since it has been said in the past that there was room for a request for a new examination without any proof of gravity, to the extent that the gravity could not be derived from the records of the first inquiry, and that there was no other way to demonstrate the gravity than through a new examination: this reasoning no longer finds any place, when the records of the first inquiry are presented in such a way that the gravity can be derived from them. To confirm this assumption, it is wonderfully relevant that this Sacred Congregation, although in the resolutions and decrees indicated and others that could be indicated, seems to have been in the opinion of admitting an appeal and a request for a new examination.

[*Latin ed. p. 393*]

Appendix X. Three hundred and ninety-three men, without any prior proof of wrongdoing; however, concerning the suspicion of wrongdoing, or the irrationality of the episcopal judgment, it sometimes wished to have a taste before admitting the appeal, as testified by Fagnan, in chapter 39, concerning age and quality, there: furthermore, although it is not necessary to establish the irrationality of the judgment in order to obtain a new examination in the appellate judgment, as is clear from the aforementioned, nevertheless, the Holy Congregation has customarily ordered a new examination given some suspicion of irrationality, and of the Bishop's prejudice, etc. And again, after the presented case of an appeal interposed due to the preponderance of qualities, and due to excessive familiarity and benevolence towards the approved Examiners, it adds: The Holy Congregation

Translated by churchlatin.ai, a product of Boyne Archives

judged that a new competition should be held in the City, where the candidate should present evidence of the truth of what has been narrated, that is, after having made some credible belief of such suspicion and wrongdoing through extrajudicial testimonies, or other informative documents, so that a probable and sufficient cause may excuse him from calumny. "And these things are said under censure, always saving, etc."

Doubts:

I. "Should it be prescribed in the competitions, which will be held in the future on the occasion of vacancies in parochial churches, that the same [questions] be 'absolutely presented to all candidates,' and that 'each candidate, within a reasonable time assigned, should in writing answer the questions proposed, and whether it should also be prescribed that each candidate should write a sermon on a passage from the Gospel, assigned to all candidates?'

II. "Should a time limit be set for those who intend to file an appeal, either due to a bad report from the Examiners, or due to an irrational judgment by the Bishop?

III. "Should the appellant, due to a bad report from the Examiners, or due to an irrational judgment by the Bishop, concerning matters of literature, be required to demonstrate the wrongdoing from the records of the first competition, in which both his and the other candidates' answers, together with the written sermons, will be found, before the granting of a new examination?

IV. "Should the appellant, due to an irrational judgment by the Bishop, not concerning matters of literature, but concerning other qualities, be required to demonstrate the wrongdoing, either from the records of the first competition, or from other documents, at least extrajudicial ones, presented by himself, before the admission of the appeal?"

RESOLUTION. The Holy Congregation, having knowledge of the cause, on November 16, 1720, responded: To I. Affirmative, by way of instruction.

[*Latin ed. p. 394*]

394 Appendix X Ad II. It is to be understood that a period of ten days is prescribed before appeals are admitted. Ad III. Affirmative, and it is to be taught that the grounds for appeal may arise either from defects in the original proceedings of the examination, or from a comparison of an authentic copy with the legal form. Ad IV. Affirmative. From these points, it is gathered that three kinds of appeals concerning the examination can arise: 1) An appeal, namely, so that the examination, judged invalid by the appellate judge, is declared null and void because of a disregard for the form prescribed by the Council of Trent, and more fully declared by the Constitution Piana. 2) An appeal based on unfavorable reports from the examiners. 3) An appeal based on an unreasonable judgment by the

Translated by churchlatin.ai, a product of Boyne Archives

Bishop. Furthermore, it is gathered that the new form of examination, of which the first formula of doubt speaks, is intended only as a directive or instruction, as it were, so that a disregard for this new form of examination does not necessarily render the examination null. Furthermore, although the judgment of approval and selection must be made based on expertise or knowledge, joined with all requirements; nevertheless, the judgment of expertise or knowledge is usually the one that outweighs the other qualities, provided that no external factor of great importance is present, such as, for example, defamation. For the quality of knowledge or expertise is highly valued above all other qualities. And here, a certain shadow of error is dispelled by the word "knowledge." What, indeed, is understood by the term "knowledge" in such examinations? It usually refers to expertise in resolving cases that involve conscience, so that the candidates are judged suitable for hearing sacramental confessions, in which the parish priest must perform the duties of judge, doctor, and physician. Practical questions are proposed, which can easily arise in the performance of the duties of a parish priest, and answers are sought. A written composition is proposed, in the vernacular language, on some passage from the Gospel, so that the candidates may be judged suitable for explaining the word of God, which is the duty most incumbent upon parish priests. Therefore, it is not a matter of knowledge considered in an abstract way; but of practical expertise necessary and appropriate for the care of souls; which, if demonstrated in a more eminent way through an examination by someone, and provided that no serious obstacle is present, there does not appear to be a strong reason why someone found to be more expert than others should be set aside in favor of another who offers other external merits. Therefore, he who, according to such an examination, is proven to be more knowledgeable than others, can not only be appealed as being more learned, but also as being more suitable; since, through the examination, his suitability is demonstrated.

1 Quid sit haec copia authentica collationata ad formam iuris, plenius cognoscis ex Instructione Clementina quae sequitur § Si quis, p. 370.

[*Latin ed. p. 395*]

Appendix X. Concerning the expertise sought in those appointed, which generally renders them suitable for the care of souls. After the Resolutions of the Sacred Congregation were presented, an Instruction was issued by Clement XI, which he ordered to be drawn up in accordance with those same Resolutions, in which the Bishops were urged, according to the opinion of the Sacred Congregation, to follow a new form of examination, designed to prevent abuses. Thus, the Clementine INSTRUCTION, Most Reverend Lord, as follows: "That parish churches be entrusted to more worthy persons, as is well known, the most holy Tridentine Council decreed in Session XXIV, chapter 18, that when a parish church is vacant, a competition

Translated by churchlatin.ai, a product of Boyne Archives

should be announced, and that, after the candidates have been examined and approved by the Bishop or his general vicar, and by at least three synodal examiners, the Bishop should choose him whom he judges to be more worthy than the others in terms of age, morals, doctrine, prudence, and other things necessary and suitable for governing the vacant church. Furthermore, to more firmly confirm this decree of the Council, the most holy Pope Pius V added, that if a Bishop should ever choose a less capable person, setting aside those who are more suitable, those who have been rejected may appeal from such a bad election to the Metropolitan, or, if the Metropolitan himself is the one making the election, or is exempt, to the nearest Ordinary acting as a delegate of the Apostolic See, or directly to the Apostolic See, and may challenge the chosen candidate to a new examination before the judge of the appeal and his examiners; but with this caution, that the appeal must be in a devolutive, not a suspensive, form, as is more fully explained in his constitution, which is the thirty-third. In conclusion, it is decreed that, after the unreasonable judgment of the former selector has been revoked, the parish church should be entrusted to a more suitable person. "However, since neither the decree of the Council nor the Bull of the Pope prescribes any certain or specific form or method for the examination to be conducted in the competition, it is difficult to say how much diversity has existed in the examinations elsewhere, and from this arises the occasion for complaints. For in some places, when not all were asked the same questions, and not the same cases were proposed to all, there were those who, even in judgment or outside of it, complained that they themselves had been given more difficult questions to answer than the chosen candidate. In other places, indeed, the same questions were proposed to all, but neither these questions nor the answers given by the candidates were recorded in writing. And it often happened that someone, of those who had been rejected,..."

[*Latin ed. p. 396*]

396 Appendix K. By virtue of the aforementioned Bull, if a newly elected candidate wished to request a new examination before the judge of the appeal and his examiners, the Holy Congregation, from the year 1603, considering that the alleged grievance could only be proven through a new examination, deemed the request for a new examination to be admissible, even without proof of the grievance, provided that the necessary evidence was presented in the subsequent judgment; in which, if the grievance concerning doctrine was proven through the new examination, it remained to be proven that the candidate possessed the qualities already required for governing the Church, so that a more definitive judgment could be rendered regarding his suitability for the administration of a parish church; for if someone is more learned, he may also be more apt or more suitable for such a position, or should be considered as such. The opinion of the

Translated by churchlatin.ai, a product of Boyne Archives

Holy Congregation was praised by writers and tribunals. In other dioceses, a commendable custom prevailed, whereby the same questions and the same cases were presented to all, and (so that no opportunity might be given to the Chancellor to add or subtract anything according to his own will) the candidates themselves, after being questioned, wrote down their answers with their own hand. "And the Ordinaries, who adhered to this custom, which is by far the best in the examination process, left it to the Holy Congregation to consider, for those who had been examined in this way and postponed, whether in the future, appeals should be granted to those who wished to request a new examination without any prior proof of grievance; since these, from the records of the first examination, could easily prove the grievance concerning doctrine; which others, examined in a different manner, could not prove except through a second or new examination. There were also others, who, through their long service in administering churches, had demonstrated their probity and expertise, who advised that some restraint should be placed on the license of such appellants, and that their excessively frequent requests for a new examination should be discouraged; since such requests rarely occur without causing considerable harm to the churches. For when a new examination is to be carried out before the judge of the appeal, it is far removed from the parish, and the candidate elected by the Bishop, who is being appealed against, is forced to abandon the parish he holds, and to leave it to an economist or a vicar, as if entrusting his bride to unknown custodians, a bridegroom who will be absent for a considerable time, and indeed for a long time, while, as happens, other examinations are multiplied, sometimes three or four, concerning first the doctrine, and then other matters that are suitable for completing the candidate's suitability, and are conveniently, if I may say so, scrutinized, before it can be decided to whom the parish should be assigned. To eliminate such complaints and inconveniences, the Holy Congregation, Interpreter of the Council of Trent, after carefully reviewing the entire matter, which had been repeated from the beginning in two sessions, on October 1st and November 16th, 1720, finally...

[*Latin ed. p. 397*]

Appendix X 397, with the approval of the Most Holy [Father], it is decreed (and this is carried out through the present encyclical letter) that all and each Bishops and other Prelates, who possess the right and authority to hold a competition, are urged to ensure that such examinations are not imposed, which many dioceses and the City itself already observe, and which the Apostolic Datary also requires, whether when a parish church is vacant, the collation of whose pastor pertains to the Apostolic See, or when a parish church is vacant, as is said, according to the decree; or finally, when, in collegiate or cathedral churches, a higher dignity is vacant, with an attached cure of souls, a competition must be held and transmitted to

Translated by churchlatin.ai, a product of Boyne Archives

the Apostolic Datary, as is known, and it is clearly prescribed in the letters that come from the Datary concerning the order of the Most Holy [Father] at that time. "Therefore, when a parish church is vacant, which is to be filled through a competition, and this is indicated by the usual formulas, the following are proposed, according to the judgment, counsel, and persuasion of the Sacred Congregation, to be observed: "First, that the same questions, the same cases, and the same passage from the Gospel, upon which they are to preach, be assigned to all those competing, in order to test their ability to speak appropriately for the occasion. "Second, that the cases and questions to be resolved be announced to all at the same time, and that the same passage from the Gospel be given to all at the same time. "Third, that a certain and equal period of time be established for all, within which they must resolve the cases, answer the questions, and compose their discourse. "Fourth, that all those competing be enclosed together in a closed chamber, so that, while they are writing (for copies will be given to all for writing), none of them may leave, nor may anyone else enter, except after they have finished writing and presented their work. "Fifth, that each of them write down their answers and their discourse by hand, and sign them. "Sixth, that the answers be written in Latin; but the discourse, which is to be given to the people, be written in the vernacular language. "Finally, that each answer and each discourse, when presented by each of those competing, be signed not only by the one who wrote it, and by the secretary of the competition, but also by the Examiners and by the Ordinary or his Vicar, who were present at the competition. "After the competition has been completed according to this formula, and the one who is judged to be more suitable and worthy has been appointed to the parish church, no appeal shall be admitted, either from a bad report of the Examiners or from an unreasonable judgment of the Bishop, unless it is made within ten days from the day of the appointment.

[*Latin ed. p. 398*]

398 Appendix X: "If anyone should appeal within this timeframe, and request that the proceedings be transferred to the judge of appeals, then either the original proceedings of the competition, sealed and signed, or certainly a genuine copy thereof, shall be sent from the Chancellor of the competition, together with another notary, having been presented and heard before the Vicar or another person constituted in ecclesiastical dignity, whom the Ordinary shall choose, to whom the notaries shall be added by the Chancellor, as well as signed by the synodal examiners who were present at the competition. "From these proceedings, or from the genuine copy thereof, unless the person who, as mentioned above, has been examined, or who has appealed due to a bad report from the examiners, or due to an unreasonable judgment of the Bishop, proves a grievance regarding doctrine, will vainly request the Holy Congregation

Translated by churchlatin.ai, a product of Boyne Archives

to grant the possibility of a new examination. "Likewise, he will vainly attempt to pursue his right in the court of appeals, if he should happen to claim to be aggrieved regarding other matters, unless, after a timely appeal, as mentioned above, from an unreasonable judgment of the Bishop, he demonstrates a grievance regarding those matters, either from the proceedings of the first competition, or at least from testimonies and extrajudicial documents, but not trivial ones. "And thus it was understood by the Holy Congregation, and the Most Holy Father approved. "But if anyone should, nevertheless, have conducted the examinations of the candidates in a manner different from that described above, then the Holy Congregation itself will continue, as in the past, to grant to those who claim to be aggrieved, the possibility of a new examination, without any prior proof of grievance. In the meantime, however, so that the memory of these letters may not be lost, the same Holy Congregation desires that they be permanently preserved in the chancery of each Ordinary. Meanwhile, I, having made this known to all, pray for all good things from heaven for your well-being." "To your Eminence, as a brother, in Rome, on this day, January 10, 1721. P. M. Cardinal CORRADINUS, Prefect. P. Lambertinus, Secretary. And here is a note: how openly those writers are mistaken who claim that such a form of examination is established as a substantial form, which of itself contains a clause that renders it invalid, as we have seen in Reclusius, cited in the competition case explained above: and how necessary it is to refer to the sources, so that the provisions of the law may be accurately understood. After such an instruction from Clement XI, finally, Benedict XIV ascended to the Papal throne, and issued a Constitution concerning..."

[*Latin ed. p. 399*]

Appendix X 399, concerning matters which he himself had previously treated in detail when he was younger. In this Constitution, he almost entirely repeats what we have explained above, and adds something further. The Constitution reads as follows:

TO THE VENERABLE BROTHERS, PATRIARCHS, PRIMATES, ARCHBISHOPS, AND BISHOPS. BENEDICT PP. XIV. Venerable Brothers, greetings and the Apostolic Blessing.

"Since the Catholic Church has always greatly feared that unworthy individuals, those not established by ecclesiastical merit, might be entrusted with the care of souls and the custody of the Lord's flock, because the state and order of the entire family changes if, as is required in the body, it is not found in the head; therefore, with due consideration of the canonical sanctions and, in particular, the decrees of the Holy Council of Trent, it has been provided that the administration of parish churches should be entrusted to those whose entire life, from their earliest beginnings to their more mature years, has progressed through the benefits of ecclesiastical

Translated by churchlatin.ai, a product of Boyne Archives

discipline, so that it would be impossible to doubt their superiority over others in terms of care, instruction, morals, and the support of long-term labor.

"However, a pernicious opinion has gradually spread among many, that the decrees of the Council of Trent do not prescribe a selection of the more worthy, but only that unworthy individuals should not be entrusted with parish churches and other benefices involving the care of souls. Therefore, our predecessor, Pope Innocent XI, condemned this doctrine, which deviates so far from the true and sincere mind of the Fathers, and taught how prudent and diligent the administration of the pastoral office should be.

§ 1. Therefore, in order to facilitate this, the same Holy Council has established that, when a parish church becomes vacant and is to be conferred by the Ordinary, a competition should be held, so that, after a thorough investigation into the age, morals, learning, and suitability of each candidate, the Bishop may choose the one whom he judges to be more worthy than the others.

§ 2. But it can sometimes happen that favors or grace, or a less equitable judgment, may lead to the less worthy being preferred to the more worthy. Therefore, our predecessor, Pope Pius V, in order that nothing might be irregular or improper in such a selection, issued a most salutary Constitution, allowing those unjustly rejected in the competition to appeal to the Metropolitan, or to a neighboring Bishop, or even to the Apostolic See, to challenge the pre-elected candidate to a new examination, and to reclaim the church that has not been rightfully conferred upon another, if it should be the case. And in order to prevent frivolous appeals, it was also provided there that the aforementioned appeal should be decided in a summary manner.

[*Latin ed. p. 400*]

400 Appendix X only needs to be presented, not suspended or delayed in any way, to the chosen candidate by the ordinary of the parish church. § 3. These most prudent laws, instituted for this very purpose, to prevent inexperienced masters, whether new or unlearned, from being preferred to deserving and experienced ones, have been violated by human fraud and malice, thereby exacerbating the wound to the very remedy. Very often, those rejected by the ordinary, invoking the authority of these constitutions, readily resort to appeals, and less legitimate causes lead them to challenge those chosen by the bishop to a new examination; furthermore, they are compelled to endure lengthy trials, abandoning the care of the flock and the custody of the church, and exhausting themselves with prolonged labor, time, and expense, sometimes persisting in the matter for a second, third, and even further instance. § 4. Indeed, experience has shown that the trial itself is often resolved to the detriment of justice; for those who had subjected themselves to examination and, being ignorant of the legitimate

Translated by churchlatin.ai, a product of Boyne Archives

institutions, were rejected in the initial hearing, after a long trial, but diligently pursuing the matter through written arguments, were sometimes preferred to others, and bitterly complained that they had been unjustly rejected by the bishop, who, in fact, was acquiring, not deserving, expertise. § 5. Hence, among upright men and those who defend justice, there was frequent cause for complaint; and while the Congregation of the Council of Trent devoted all its efforts and diligence to resolving these matters, it was ordered to us, who were performing the duties of secretaries, to diligently investigate the origin of this evil and to seek appropriate remedies, as far as possible, by explaining the matter in writing, which was subsequently published. In explaining our views on this matter, we found that the primary fault lay in the fact that the examination was conducted orally and not recorded in writing; for those chosen for the care of souls by the ordinary and challenged to a repeated examination before another judge, could not defend their legitimate appointment with certain and permanent proof of their already proven suitability; but the entire matter seemed to depend on the chance of a new examination before a judge completely ignorant of the facts of the previous proceedings. Therefore, to the great detriment of justice, it was the opinion held in the forum that one could be challenged to another judge without presenting any document of undue rejection. This, indeed, was far removed from the censure of the sacred canons, and we believed that this corruption could easily be remedied if a certain and properly arranged form for conducting the examination were prescribed; if the questions proposed to the examinees and their answers, and the entire series of events, were recorded in writing; and if, finally, the complete record of the entire proceedings were brought to the judge of appeal. § 6. The plan we proposed not only pleased the Congregation, which ratified it on November 16, 1720; but it was also strengthened by the judgment of the pontiff, Clement XI, an outstanding defender and upholder of ecclesiastical discipline. And so, that the ordinaries of the places might carry out all these things...

[*Latin ed. p. 401*]

Appendix X 401. To the sons, who were of equal standing, and who performed their duties with obedience and diligence, appropriate letters, written by our own hand, were given on January 10, 1721, which letters were approved by the sentiments and pronouncements of the same Pontiff; and although the content of these letters has been previously entrusted to the press and inserted in the Bullarium of our predecessor, Clement, we have deemed it fitting to refer to them here. Here is the Instruction of Clement XI, in his own words, as we presented it above: "§ 8. We have sufficiently and abundantly learned, through experience, how much the salutary institution of the aforementioned laws benefits the proper dispensation of ecclesiastical duties, the administration of justice, the resolution

Translated by churchlatin.ai, a product of Boyne Archives

of disputes, and the maintenance of clerics in their office, when, embracing the Church of Ancona and then our own beloved Bologna with paternal charity, we entrusted parishes and the care of souls to pastors who, relying on the protection of these laws, were more worthy; and so it happened, with the blessing of the Lord, that there was such agreement of opinion that no one complained that a less worthy person had been given a higher position, or that the governance of a vacant church had been entrusted to someone less deserving. "§ 9. But because we are warned by certain indications that this has not happened to other Bishops, or that there are even those who, neglecting private studies, often deviate from and challenge the judgment of the Bishop: we, therefore, concerned about fulfilling the proper parts of our office, have deemed it necessary to add certain things to the aforementioned letters, and to clarify more clearly certain things that were tacitly and briefly stated therein, so that everything may be carried out correctly and in order. "§ 10. We were saddened to hear that in most dioceses, even if there is a commendable and firmly maintained custom of recording the examination of candidates in writing, nevertheless the votes of the Examiners are concerned only with literary knowledge, and no inquiry is made as to the age, education, gravity, and moral character of the clerics, their prudence, the duties they have previously performed, and whether they are indeed such as can help their flock with word and example. How far this practice deviates from the path of Trent will be plain to anyone who will consider the words reported in chapter 18, session XXIV, on reform: "After the examination has been completed, those who have been judged suitable in morals, doctrine, prudence, and other things suitable for governing the vacant church shall be declared." And the Congregation of the same Council, knowing this well, has repeatedly decreed that Examiners fail in their duty if they are only judges of doctrine, and do not inquire whether those who are most worthy of the office of parish priest are those who, above all, are distinguished by probity of character, by their labors, by their previous service to the Church, and by other qualities necessary for the proper performance of that office. "§ 11. After the examination, it is done only that the power is given to the Examiners to declare those who they have judged to be suitable for the governance of the church, reserving to the Bishop the election of the more worthy, as is established by the words of Trent: "From these..."

[*Latin ed. p. 402*]

402 Appendix X: Whether the Bishop should choose the one he judges to be more suitable than the others. But if, perchance, a cleric is called to account by accusers of bad reputation, whose sole concern has been the pursuit of doctrine, without, at the same time, a diligent investigation of other qualities suitable to a pastor, then the order of judgment should be such that even the judge to whom the appeal is made should consider only

Translated by churchlatin.ai, a product of Boyne Archives

the matter of doctrine, and that a man of letters, though less suited in other respects and sometimes even unworthy, should not be placed in charge of the Church to the detriment of souls and the injury of discipline; on the contrary, he who, although less distinguished in doctrine, nevertheless excels in morals, gravity, prudence, a proven reputation, long service to the Church, and a multitude of virtues, should be preferred.

§ 12. Furthermore, it does not seem sufficient to eliminate abuses if both the Bishop and the Examiners, with united efforts, devote all their energies to conferring a concordant judgment on the person who, although perhaps yielding to the other in knowledge and learning, is nevertheless more distinguished by the adornment of other qualities. Indeed, the one who is passed over, relying too much on his doctrine, often appeals to the Bishop's judgment, which is sometimes unreasonable; and the cause of the appeal is presented entirely in the pursuit of greater doctrine and to remedy the injury done to the learned man, without any consideration of the other virtues that are lacking in the appellant, and therefore, the vigilant pastors of the churches should carefully consider the outcome of such an appeal, and deeply grieve that parishes are entrusted to unsuitable pastors, as has been said.

§ 13. But if the judge of the appeal (which rarely happens) grants only as much consideration to knowledge as is sufficient, and investigates more thoroughly the character of the man, his gravity, prudence, the labors he has undertaken, the examples of his virtues, and finally, the reason of his entire past life, which is suitable for tending the flock, then so many testimonies are presented to the judge by the appellant, collected with diligence, that, having revoked the Bishop's judgment as unreasonable, the judge should not hesitate to help the appellant, whom such abundant and conspicuous proofs of integrity support.

§ 14. Finally, since it often happens that Bishops, as if placed in a watchtower, see the faults of their subordinates, it may occur that, in a competition in which both knowledge and morals are considered, the one who is suitable is rejected by the Examiners, because some hidden vice or stain of crime is known to all except the Bishop. If the Bishop, with just cause, were to overlook this hidden crime and prefer the one who is free from such a fault, then the one who was passed over would feign a grievance and, appealing to a higher judge who is ignorant of the crime and using the usual pretext of appeal, would be elevated to the pastoral office, who cannot benefit the people, but harm them, nor provide good governance, but increase discord.

§ 15. Therefore, the remedy for men of bad character is appeal.

[*Latin ed. p. 403*]

Appendix X 403. Those who, under the guise of promoting justice, institute schemes that actually lead to the defense of iniquity, may perhaps, by

Translated by churchlatin.ai, a product of Boyne Archives

some means, seem to act well; but we cannot, in any way, approve of this, because it would be contrary to the mind of the Council of Trent, which tacitly permits an appeal in cases where an Examiner's report is based on a bad foundation, as those words seem to indicate: "Nor shall any devolution or appeal, even to the Apostolic See, or its legates, or vice-legates, or nuncios, or bishops, or archbishops, primates, or patriarchs, impede or suspend the execution of the aforementioned reports of the Examiners." To this sanction corresponds also the Piana Constitution, which admits an appeal in cases of an unreasonable judgment by a bishop.

"§ 16. Concerning this matter, we have considered it our duty, Venerable Brothers, to prescribe the order of procedures that should be followed in such a matter, which we have found to be useful through long experience in appointing pastors of souls, who can lead and benefit the flock entrusted to them.

"I. The Bishop, having knowledge of the vacancy of a church, shall immediately appoint a suitable vicarious in it, according to the prescriptions of Trent, with a proportionate assignment of the fruits, according to his judgment, who shall sustain the burdens of the church until a pastor is provided.

"II. Public notice shall be given by edict of the competition to be held at a time prescribed by the Bishop, and by the same edict, all shall be clearly and openly warned to present, within the assigned time, before the episcopal chancellor or another appointed by the Bishop, proofs of their qualities, merits, and services, as well as judicial and extrajudicial attestations, and other documents of the kind, which must be free from fraud; otherwise, after the said time has elapsed, such documents, whatever they may be, will not be accepted.

"III. On the day of the competition, the episcopal chancellor shall, with unwavering fidelity, elicit from each person, through duly presented credentials, their merits, qualities, and qualifications, and a copy of the summary shall be given not only to the Bishop or the general vicarious acting in his place, but also individually to all the Examiners present at the competition, so that they may render judgment on their knowledge, life, morals, and other qualities necessary for the proper governance of the church.

"IV. On the day appointed by the Bishop, the competition shall be held, carefully observing the form prescribed in the aforementioned letters published in the year 1721, and a detailed account of everything that took place shall be carefully recorded. Furthermore, the Examiners, in order to obtain a certain and undeniable opinion of the candidates' knowledge, after diligently examining the expertise of each..."

[*Latin ed. p. 404*]

404. In examining and explaining any particular point of ecclesiastical

Translated by churchlatin.ai, a product of Boyne Archives

doctrine, whether drawn from the Holy Fathers, from the sacred Council of Trent, or from the Roman Catechism, and having given answers to the questions proposed, based on any written work with equal diligence; and after having determined which candidate excels in the soundness of judgment and the elegance of expression, both in the written examination and in the oral presentation, adapted to the evangelical text or other given theme: the Examiners, unless they apply greater discernment in investigating other qualities conducive to the governance of souls; they shall inquire into the honesty of character, gravity, prudence, the services rendered to the Church thus far, the praise acquired in other duties, and other commendable virtues, all of which must be closely associated with sound doctrine; and having considered all these matters together, they shall reject the unsuitable by their votes and report the suitable candidates to the Bishop.

"V. With the complete concurrence of the Bishop, or in his absence by the General Vicar, together with at least three synodal Examiners, the summary of the requirements previously distributed shall be delivered to the Chancellor, who shall seal it, or keep it with the records in secret, and shall show it to no one, except by order of the Bishop or his General Vicar. Subsequently, the Ordinary, when it pleases him, shall choose the more worthy from among those approved, and the possession of the office shall not be delayed to him by any claim or objection.

"VI. If any cleric should appeal from a negative assessment by the Examiners or from an unreasonable judgment by the Bishop, he shall present the complete record of the examination before the court of appeal, and the judge shall not pronounce a judgment unless he has examined these records and found them to be without merit. Furthermore, in delivering the judgment and in restoring any damage, the judge shall rely solely on the evidence drawn from the records, both with respect to doctrine and with respect to other merits. Because, from the public announcement until the day of the examination, only a sufficient amount of time has elapsed for the convenient presentation of necessary rights, testimonies, requirements, and other documents of merit; therefore, in order that every possibility of fraud may be eliminated, we decree and strictly command that the aforementioned testimonies, both judicial and extrajudicial, and all documents carefully sought out and, as they say, discovered after the examination, shall in no way be accepted: notwithstanding the aforementioned letters issued by the Congregation of the Council of Trent in the year 1721, by which we derogate from the foregoing in this regard, but which, nevertheless, together with all that they contain, shall remain firmly in their full force and effect in all other respects.

"VII. If the Bishop, having set aside one or both of the approved candidates, offers the position to someone else for a reason known only to himself, which he believes should be made known to the judge of appeal

Translated by churchlatin.ai, a product of Boyne Archives

in order to remove any suspicion of unjust preselection: he shall inform the judge in a confidential letter, adding the inviolable law of secrecy."

[*Latin ed. p. 405*]

Appendix X 405. Let no one attribute cleverness to this practice of ours, since it flows from the Decrees of Trent. Indeed, in Session XXIV, chapter 20, concerning reforms, it is stated: "Furthermore, if anyone has appealed in cases permitted by law, or has been aggrieved by some injustice, or has otherwise, within two years from the time mentioned above, appealed to another judge, he shall be obliged to transfer all the proceedings before the Bishop at his own expense, having first notified the same Bishop, so that if he sees anything that seems to him useful for the instruction of the case, he may inform the judge of the appeal." And although we must fear that this practice of warning the judge to whom the appeal has been made, which was formerly customary, may have become obsolete in these times and withdrawn from the forum, nevertheless, the Bishop (as has been said) if, for a reason known only to himself and not to others, but which is nevertheless worthy of approval, he has benefited the Church, shall inform the judge of the appeal in secret letters and shall reveal it. Furthermore, let the judges know that the reasons presented by the Bishop are to be kept inviolably secret, and that no small weight should be given to the testimony of that pastor, to whom the divine mandate commands him to recognize his sheep. For it is hardly believable that Bishops would be so forgetful of the salvation of others as well as their own, as to be moved by hatred or favor, and thus, to the singular injury of the sacred canons, to say that evil is good, and good is evil, placing darkness for light and light for darkness. "If, however, the faith of the judge to whom the appeal has been made is suspected, and he does not consider it proper to reveal such hidden reasons; he shall inform the Cardinal Prefect of the Holy Roman Church, who is in charge of the Congregation at the time, in secret letters, so that no counsel or authority may be lacking, so that due place may be given to justice by the judge of the appeal."

§ 17. Furthermore, since equity also requires that appeals, which sometimes cause great expense to the litigants and damage to the Church, be concluded as quickly as possible, therefore, when a judgment has been rendered by the judge of the appeal, which is entirely in conformity with the preliminary decision made by the Bishop, no access shall be open to a new appeal, but the authority of the res judicata shall impose an end to the controversy. But if the judge of the appeal pronounces otherwise than the Ordinary, it is permissible for the prelate from whom the cause originated to appeal to another judge, firmly retaining, in the meantime, the parochial church's possession. Finally, after a third judge has rendered his judgment, so that the parties may not be unduly burdened with labor and expense, especially since we are dealing with the care of souls, to which it is harmful

Translated by churchlatin.ai, a product of Boyne Archives

to deprive a certain pastor of comfort: let him obtain the legitimate right to govern the church to whom two judgments conform, and let no remedy of a new appeal be granted to the one who is failing.

§ 18. These rules, although they do not abolish the appeal, we believe have provided sufficient safeguards for ecclesiastical discipline.

[*Latin ed. p. 406*]

Appendix 406 X. Concerning the proper order for fully and correctly conducting affairs. It remains that the matters previously mentioned be entrusted to due execution, and that the vigilance of the Ordinary in the matter of the places be not neglected. It would be intolerable that complaints and requests for the correction of abuses be brought before our Apostolic See day after day by those who already neglect and despise their duties.

§ 19. Furthermore, it often happens that parish churches, dignities, canonries, and other benefices that involve the care of souls are to be conferred by the Apostolic See, either because they have been vacant for reserved months, or because they are reserved from another head. Following the footsteps of our predecessors, we decree and command that, in either of these cases, the concurrence [of the Bishop] be indicated by the Bishop without any discrimination, and without any permission or license being requested for this act, which the Bishop should understand as granted to him by these our letters.

§ 20. Once the concurrence has been completed, in the case of benefices that are reserved only for the duration of reserved months, the Bishop shall choose the most suitable candidate from among the approved candidates and inform the Dataria [the office in the Apostolic See that handles benefices], and he shall not transmit the acts of the concurrence unless they are requested by the Dataria when it deems it opportune. However, if the said benefices, which involve the care of souls, are reserved from any other head than the reserved months of the Apostolic See, then, in that case, following the ancient and unchanged practice, the Bishop shall abstain from giving his preferential judgment and shall present the acts of the concurrence to the Dataria of his own accord.

§ 21. However, it is permitted for the Ordinaries, at their discretion, to notify the Dataria in writing, by familiar letters, the person whom they deem [to be suitable], 1 1 Here, it should be noted that only Bishops have this right, not Vicars Capitular. This right in the Dataria is called "il dritto del magis" (the right of preference). Formerly, the Vicar Capitular also had this right, as can be seen from what is reported in the work on the diocesan synod, book 4, chapter 8, and Fagnano, book 3, decrees, title, chapter "Concerning what is to be done when the See is vacant," number 18, and what you have read in Volume I of these ephemerides, page 170 and following. This right, called "il magis," entails, according to current prac-

Translated by churchlatin.ai, a product of Boyne Archives

tice in the Dataria, that Apostolic Letters be issued ex officio (by official right); however, when this right of "il magis" is not held, the matter is referred to the Most Holy Father, who confers the parish benefice. When the episcopal see is vacant, the Vicar Capitular must report the matter to the Apostolic Dataria, and indeed, he must send the acts of the concurrence to it, although the Apostolic Dataria does not insist on this transmission of the acts. Nevertheless, nothing prevents the Vicar Capitular from recommending someone above the others. It is also the practice of the Apostolic Dataria that, even if a benefice is reserved for several reasons, only one reason for reservation is mentioned in the Apostolic Bulls, that is, the principal one, for example, for the duration of reserved months. Therefore, if a parish benefice is vacant when the episcopal see is vacant, and it also remains reserved for the duration of reserved months, only the reason for reservation for the duration of reserved months is mentioned in the Bulls, and the Bull is issued in the same way as if the Bishop were present, that is, with the same formulas, and only the word "magis" is omitted, so that from the wording it would appear that the Vicar Capitular has the right of "il magis," which he does not have.

[*Latin ed. p. 407*]

Appendix X 407: For the better governance of the Church, and to ascertain whether any hidden or justly omitted cause might exist, which might hinder the attainment of a benefice, We shall ourselves, after a time, by the bright example of this See, the principal and teacher of all, demonstrate how much weight should be given to episcopal judgment, and how We shall honor you, venerable brothers, called to participate in our solicitude, to whom We impart, meanwhile, the Apostolic blessing with paternal affection. "Given at Rome, near St. Mary Major, on the 14th of December, 1742. In the third year of Our Pontificate."

Someone might ask, what was the law that prevailed before the Council of Trent concerning the assignment of parishes to suitable priests? To this, it is answered that, although benefices should not be conferred except upon those who are suitable by knowledge and other merits, cap. *Ad decorem, de Instant.*, nevertheless, there were not, by absolute law, examiners who were to be present before whom the candidates should be examined under penalty of nullity, and declared suitable. Innocent III, in cap. *Ad haec, de Officio Archidiaconi*, stated that among the duties of the archdeacon was "that those who are to be placed in charge of ecclesiastical benefices should first be examined by the archdeacon and afterwards presented by him to the Bishop." But as the jurisdiction and office of the archdeacons gradually diminished through the substitution of Vicars General, such an examination seems to have been carried out by the Vicar General, unless the Bishop reserved this duty for himself.

The question then arises, whether, contrary to the prescribed form of

Translated by churchlatin.ai, a product of Boyne Archives

the Council of Trent, a contrary, legitimate custom could exist. The full solution of this question depends on a more thorough examination of several matters, which I will address on a suitable occasion. For the present, I believe it is sufficient to indicate what was thought about this question at the beginning of the last century by the tribunal of the Sacred Rota.

The Sacred Rota, at the beginning of the last century, decided several times that parish benefices, standing as they do under ecclesiastical patronage, should not be provided for through competition, *Pitonius de Controversiis Patron*, allegation 5, n. 2. However, as Pitonius states, the controversy did not cease, and in a certain case concerning the parish of Legion, although it was decided by all the judges in the aforementioned sense, there was a serious division of opinions regarding the reasons by which a valid custom could be demonstrated. Therefore, when the case was to be reconsidered, the Sacred Rota ordered that two selected Advocates of the Roman Curia should write their opinions, namely Pitonius and Labertinus. But while these were writing their opinions, one of the litigants died, and so the case was not reconsidered. Nevertheless, Pitonius wrote down his opinion and submitted it to the printers, and it is that which we read in the aforementioned allegation 5 concerning controversies about patronage, in which Pitonius, contrary to the decisions already given, maintained that the custom was not valid.

[*Latin ed. p. 408*]

408. THE ADVANTAGES DERIVED FROM FUNERALS. December 1, 1872. Summary of the facts. Archbishop N, seeking a brief respite from pastoral duties, went to a certain villa, where he died from illness. It has long been the custom in that Archdiocese that, when the Archbishop is in danger of death and resides in the Episcopal Palace, the last sacraments are administered by the highest dignitary of the chapter; and upon his death, his body is exposed in the grand hall of the same palace, with many candles lit around it and on the altars erected there for the celebration of Masses; from there, it is transferred to the cathedral church, where the funeral is held. Regarding the right to receive the wax used in these funerals, disputes have arisen for a long time; but in the year 1806, on the occasion of another funeral, the Canons, who had never received any such benefits, in order to put an end to the matter, issued a decree. After summoning the parties involved, that is, after hearing three Vicars Parochial, who, as administrators of the chapter in the cathedral church, had, from time immemorial, received a portion of these benefits; after hearing the masters of ceremonies, who received a portion of the same wax, a right they had long held, and who were burdened with the task of dressing the body and directing all such funeral ceremonies; after hearing the sacristans of the cathedral church, who, by custom, assist in these funerals, the sacristans of the Episcopal Palace, while Masses are celebrated in the presence of the

Translated by churchlatin.ai, a product of Boyne Archives

body, a chapter decree was issued, by which it was established that the wax remaining from the funerals should be divided into three parts. This decree was subsequently carried out without contradiction.

[*Latin ed. p. 409*]

Emolumentorum 409. This is the custom observed while the Archbishop lives: but when the Archbishop dies unexpectedly in the Villa, in this instance, things transpired differently; for only one altar could be erected in the place where the Archbishop resided, due to the narrowness of the location; the others were made simultaneously with the fitting tomb in the cathedral. Then, the body, accompanied by a solemn funeral procession, the people, and the clergy, was carried to the cathedral church, and there the solemn funeral rites were performed, and, due to the harshness of the times, it was buried in the common cemetery. From this arose a dispute concerning the funeral expenses between the vicars of the cathedral church and the parish priest A, within whose parish boundaries the Villa was located; this dispute, not being able to be resolved amicably, led the Capitular Vicar to issue this decree: "We declare and proclaim that all wax remaining from the funeral offerings is to be divided and distributed into four equal parts, one belonging to the parish priest of the Villa, the second to the vicars of the cathedral church, the third to the masters of ceremonies, and the fourth to the sacristans of the same cathedral church." But the parish priest A, not agreeing with this decree, but requesting half of the wax, as is customary in that Archdiocese when dealing with parishioners who die in this manner, appealed to the Sacred Congregation of Councils, which, preserving the customs to be observed, resolved the proposed question.

Dispute in summary. FOR THE PARISH PRIEST OF THE VILLA: It is established by law that, by virtue of his office, the parish priest is entitled, by common law, to perform the funeral rites for all those who die within the boundaries of his parish, not excluding clergy or canons of the cathedral church; and the parish priest, in performing these funeral rites, represents the Bishop. *Amostaz, de emesis piis, t. 2, I. 6, c. 2, n. 25, de funeribus*, so that, when he performs his office, he must precede the Chapter of the cathedral church.

[*Latin ed. p. 410*]

410. Regarding these matters concerning funerals, as taught by Samuel, in *De Sepulturis*, disputation 5, controversy u, conclusion 16, this also applies when dealing with pastors who die in another parish within their diocese, provided that it is presumed that they chose to be buried there. Indeed, it does not seem that the fourth part of the funeral expenses should be deducted for the cathedral church, according to the teaching of Cardinal Tuse, in *Liturgia*, 2, conclusion 27, number 24: "The limit for the bishop pertains to the burial in another church or monastery where he was

Translated by churchlatin.ai, a product of Boyne Archives

buried, because, nevertheless, the fourth part is not due to the cathedral church, because Clementine [Canons] speaks of parishioners, to whom the sacraments are administered by a parish priest, and it does not apply to a bishop, who is not a parishioner, but ministers to others." Nor should one say that the matter pertains to an archbishop who, for the sake of rest, went to a village and died there: for it is answered that it is not necessary for a person to have a domicile in the place where he dies in order for the pastor to exercise his rights there, but it is sufficient that he resided there at the time of his death, even if he did not intend to remain there permanently; which certainly happens to those who go to the countryside for recreation and die there; as is stated in the ancient law of Amostaz, book 1, chapter 8, number 12. Furthermore, these rights do not conflict with the statutes of that diocese, in which, in the chapter on funerals, the following is stipulated: "If it should happen that someone from our diocese dies and is buried in another place, then only three candles shall be given by the pastor who administered the sacraments and in whose parish he died, and also the wax and incense that are lit at home or in the church near the body; the rest shall be the proper emolument of the pastor." These words, being general, seem to include the bishop. Therefore, since the diocesan statute makes law for the entire diocese, according to the same opinion, it would have been necessary to issue a decree. Nor can it be opposed by the transaction of the year 1806, and the custom that arose from it; since such a transaction is law.

[*Latin ed. p. 411*]

He can only administer the sacraments to those who are passing through, but not to a stranger. ON THE CONTRARY, according to the opinion of the Curia, it is not sufficient for the exercise of parochial rights that someone dies within the boundaries of a foreign parish, even if they have resided there for some time, nor is there any reason to consider the place where someone receives the sacraments in extremis. For the Holy Canons consider the place where someone is accustomed to receive the heavenly food, Reiffenst., in ius can., I. 3, tit. 2, n. 6; Passerin., de Statio., qu. 187, art. 4, n. 311, who states: "Everyone must be buried where he ought to receive the sacraments, because both are parochial rights, namely, 'to administer the sacraments and to bury the dead.'" Scarfant., lib. 3, add. 4, 11. 8: "The territory of any parish is proper, and its jurisdiction, or rather, its parochial office, is not attached to a place, as is the jurisdiction of Ordinaries, but consists and is founded in the person of the parishioners." Pignatell., consult. 48, n. 22, t. 3. Hence it follows that a parish has no right in a foreigner, cap. 2, de Paroch., Fagnan., in cap. Ne pro dilatione, n. 2, de poemi., and remiss. "On the contrary, it has every right in its own parishioners everywhere 'in the universe.'" Others, sparsim. Therefore, he who lives elsewhere only temporarily and dies there, must be buried in his own parish, concerning

Translated by churchlatin.ai, a product of Boyne Archives

which Scarfantonio continues, /. c, n. 4c: "He who works in the countryside and dies there, 'is not to be buried in the rural parish, but must be transferred to his parish in the city, to whose parish the right of burial belongs, according to the text in cap. Is qui, de sepult., in 6; Pignatell., consult. 63, n. 4, t, 7, and others." To this Pirhing adds, lib. 3, tit. 28, n. 6: "But if someone, because of war or plague, transfers himself from the village where he has his home to a city with the intention of returning, and it happens that he dies and is buried there; the parochial canon is not due to the church of the city in which he died and was buried: because there the deceased did not have his home, and..."

[*Latin ed. p. 412*]

412 Concerning the emoluments: "Consequently, neither the parish, if the person has not migrated there with the intention of remaining there permanently, nor is that portion of the ecclesiastical revenues due to the parish of that place in which he has established his domicile." Regarding this matter, the Resolution of the Sacred Congregation of the Council, concerning the burial of the dead, was discussed on December 18, 1824. The case concerned a presbyter who, during the Paschal season, had offered himself in the parish of the Most Holy Cross outside the city to hear the confessions of the faithful, and there, unexpectedly struck by a sudden illness, died. The parish priest performed the funeral rites and buried the deceased, retaining the emoluments; however, the parish priest of the domicile contested this, and the matter was brought before the Sacred Congregation under the following questions: I. "To whom does the right of burial and funeral rites belong in this case?" And, in the affirmative, to the parish priest of the domicile: II. "Is there a place for the exhumation and restitution of the body in this case?" III. "To whom, and which emoluments of the funeral rites are to be restored in this case?" To which the Sacred Congregation responded: To I. Affirmative, in favor of the parish priest of the domicile. To II. It does not expedite (i.e., it is not necessary). To III. Affirmative, in all respects. If these rights, which are common, are true, it is even more certain when it comes to Bishops: for Bishops are so closely united with the cathedral church that they are said to be and are of the same spouse; and they are considered to have their fixed domicile where they reside; therefore, there is no doubt that they ought to be buried in the cathedral, unless they choose another place of burial; Amostaz, *l.c.*, c. 8, no. 64. "Patriarchs, Archbishops, and Bishops, when they die without having chosen a burial place, are buried in their cathedrals; for the reason is that they are seen to have their domicile there, where they are required to reside," Council of Trent, session 23, on Reforms, ch. 21. "However, if they die outside the city, they are transferred to the cathedral. This, however, should be understood, if it can be conveniently transported... If, however,

Translated by churchlatin.ai, a product of Boyne Archives

a Bishop dies outside his diocese..."

[*Latin ed. p. 413*]

Concerning the emoluments: 413 "They are to be paid to the cathedral church; for it is fitting that, since the cathedral church is the bride, she should receive nothing less than to have her own buried within her." Other authors agree with this. Furthermore, if you add that a sick bishop should receive the sacred Viaticum from the highest dignity of the chapter, as taught by the *Caeremoniale Episcoporum*, book 2, chapter 15, number 4, and the Extreme Unction from the sacristan of the cathedral; it follows spontaneously that no right pertains to the parish priest in the emoluments of funerals, but all rights belong to the cathedral church. Nor can a diocesan statute be opposed, unless the bishops and similar general provisions are mentioned therein. Therefore, if, in a particular case, the custom has prevailed, and the emoluments for funerals have been received by various titles, by the Ceremonial Master, the Vicar of the Chapter, and the cathedral sacristan, and if a transaction has also been confirmed by the Chapter in the year 1806 to settle these matters, and has been observed until now, it seems that the opinion of the Vicar of the Chapter should be upheld in this matter. If, moreover, the remaining portions of the funeral expenses have been divided according to this same opinion, so that a fourth part has been assigned to the parish priest of *Aequa*, it seems that this was not done according to the law of funerals; but rather, to compensate for the detriment to the church, according to the provisions of the Roman Law for the Clergy, chapter 4, section 9, in which it is written: "Concerning funerals, whoever, whether because the parish church does not seem sufficiently ample, or for any other reason, pays for funerals in a church other than the parish church, a just compensation must be made, in proportion to the detriment and damages."

Doubts: I. "Should the opinion of the Chapter Court be confirmed or rejected in this case? And to the extent that it should be rejected in the first part, and affirmed in the second. II. To whom do the emoluments of the funeral pertain in this case?"

[*Latin ed. p. 414*]

RESOLUTION OF QUARRELS 414. The Most Holy Congregation of the Council, having knowledge of the matter, on December 14, 1872, judged it fitting to respond as follows: To I. To confirm the opinion; and furthermore, to provide. FROM WHICH WE GATHER: I. According to the common law, a deceased person who went to the countryside for the purpose of recreation should not be buried in a rural church, but in his own parish, if he can be transported there without danger. Boniface VIII, chapter 3 on burials, paragraph 6, decreed: "He who, having his residence in a city or town, sometimes goes to a rural village for recreation, or to engage in rural activi-

Translated by churchlatin.ai, a product of Boyne Archives

ties there, if he dies there without having chosen a burial place, should not be buried in the church of that village, but in his parish church, or rather, in that in which his ancestors have been buried from ancient times, provided that he can be transported there without danger." It is unnecessary here to refer to what A Mostazo wrote about this passage in the aforementioned work, "De causis piis," volume 2, book 6, chapter 18, paragraph 13 and following, where, responding to those who taught that a person who dies in the countryside, even if he did not intend to live there, should be buried in the rural church, he wrote: "But this difficulty was completely resolved by Boniface VIII in chapter 3, paragraph 6, where he expressly states that he should not be buried in the church of the rural village; but if he has not chosen a burial place, nor has an ancestral burial place, he should be buried in his parish church, where he has his residence, provided that he can be transported there without danger. And the reason is clear, because when someone goes to the countryside for recreation or to engage in rural activities, he still retains the parochial status of his residence, and therefore he should be buried in the parish of his residence, not in the church of the village itself." Barbosa, in the aforementioned chapter, paragraph 2, makes an exception to this text, unless it is possible to transport the body without danger; in that case, he should be buried in the rural parish. "However, this teaching does not fully explain the text; some have understood it to refer to the person who goes to the countryside for a short time, namely for recreation or to engage in rural activities, who, if he does not intend to live there, still retains the primary parochial status in all respects, and therefore he should be buried in the urban parish, not in the rural parish, as some explain in Sánchez, book 3 on Matrimony, dispute 23, paragraph 9. But the words 'or to engage in rural activities there' indicate a longer period of time; for rural activities cannot be carried out for such a short time; therefore, we are faced with the question: is it necessary to have the intention of permanently residing and acquiring a domicile in order to acquire parochial status where one dies? There are two opposing opinions on this matter, the foundations of which are presented by Sánchez in the aforementioned dispute, 23, paragraph 9. But paragraph 13 itself embraces the opinion that the intention of permanently residing is not required to acquire parochial status.

[*Latin ed. p. 415*]

415. Regarding funeral expenses: I. Why, when a rural parish does not have the right to bury a deceased person, nor the right to receive funeral expenses. II. All of these matters apply with even greater force to a deceased Bishop in the countryside, since the Bishop does not possess the common rights of parish priests, and he should be buried in the cathedral church, unless he chooses another burial place. III. Therefore, the parish priest in the town where the Archbishop died did not have any right to funeral expenses;

Translated by churchlatin.ai, a product of Boyne Archives

however, due to services rendered or inconvenience caused, he may have been entitled to a portion of the expenses, perhaps even a fourth, or more. IV. Antonellus, in book 1 on Canon Law, chapter 12, section 3, number 36, and Sperellus, in decision 87, number 4, state: "But it must be considered that when someone resides in a foreign parish with the intention of returning to their own home, and not of remaining there permanently, they do not lose their parochial rights; and this is true not only if they are present for a short time, but also if they are there for a year or a significant portion of a year. This is proven in the aforementioned chapter. Those who are clearly..." However, since, when absent, certain things must necessarily be received, such as the sacraments, for example, Penance, the Eucharist, marriage, and others, which cannot be received without great inconvenience in their own parish if they are far away; therefore, by the indulgence of the law, the parish where they reside should properly provide these things, and they should be able to receive them from that parish. The same is to be said of burial; for since they can properly receive the sacraments there, it is fitting that they should be buried there, and in this respect they are considered as parishioners. It would be extremely harsh to force those who are absent to return to their own parish to receive these things, and to corrupt the burial of the deceased. This is not acquiring parochial rights without the intention of remaining there, but rather an indulgence to receive these things. And this is confirmed by the aforementioned passage: "provided that it can be transported to that place without danger." These words clearly indicate that if there is a danger, the deceased should not be buried in the parish of their own home, which they retain, but in the rural church where they are present, serving in place of their own parish. "From this, it is clear what the Doctors say about scholars, doctors, judges, and others who do not reside in their own parish, but in a foreign one; for great inconvenience would be caused to these people if they were forced to return to their own parish to receive the sacraments and burial, unless the distance is so short that they could conveniently receive them there. In that case, it cannot be said that they can receive them, because in this case, the indulgence of the law does not extend to the parish where they reside, so that it is considered as their own." Thus, A. Mostazo thinks about this question; but in practice, such a question is almost everywhere resolved by diocesan statutes.

[*Latin ed. p. 416*]

416. CONCERNING DECIMAS. December 14, 1872. Summary of the Case. In the year 1859, a noble family, designated as AA, converted a portion of their land into a vineyard. The parish priest had the right to receive from that land one-twentieth of the produce derived from wheat, wine, hemp, and flax, although this land was not located within the boundaries of the parish of that same priest. However, as the vineyard expanded, replacing wheat, hemp, and flax, the predecessor of the current parish priest

Translated by churchlatin.ai, a product of Boyne Archives

had already begun to receive one-twentieth of the wine produced. In the year 1867, the family JV refused to continue paying such decimas of wine. The parish priest, having initiated a summary legal proceeding before the Praetor of that city, compelled the family JV to pay the decimas as previously. The family JV appealed to the Sacred Congregation of the Council, simultaneously issuing a protest before the same secular judge, so that their rights would not be violated by the enforced payment of the decimas. While the appeal was pending before the Sacred Congregation of the Council, in the year 1869, the parish priest summoned the family JV before the civil corrective tribunal, in order that it might be declared that the right to receive decimas on that land, concerning all produce, in the proportion of five for every one hundred coins, belonged to him as parish priest. The family JV unsuccessfully attempted to have this tribunal dismissed as secular, and therefore not competent to judge matters pertaining to the Church, especially since an appeal was pending before the Sacred Congregation of the Council. And in the year 1871, the parish priest obtained a judgment in accordance with his wishes. The matter being brought before the Sacred Congregation of the Council, the parish priest was severely reprimanded for having initiated a legal proceeding before a civil tribunal concerning a matter pertaining to the Church, and for the ecclesiastical censures thereby incurred. To this reprimand, the parish priest responded promptly, stating that he had done nothing.

[*Latin ed. p. 417*]

The family N. alleged that the collection of tithes was being carried out unjustly, and, acting in good faith, they requested a remedy for this situation from the Holy See, to which they declared their willingness to comply with its directives. On June 1st of the same year, they obtained from the Most Holy Father the grace of absolution from the censures, and a dispensation, to the extent necessary, from any irregularity. Therefore, the case presented in its entirety, with the customary formalities observed, was brought before the Sacred Congregation of Councils.

Regarding the matter of tithes, the family N. argued that, since the land, or vineyard, in question was located outside the boundaries of the parish, the parish priest had no right to collect tithes from it, unless he could prove an ancient custom. The Decretum, *Institutiones Canonicae*, Book I, Title 16, chapter 1, paragraph 1, states: "Tithes can be acquired either by the privilege of the Supreme Pontiff, or by prescription of forty years with a title; without a title, however, by prescription of time, which surpasses human memory." However, the parish priest was unable to prove such an ancient custom.

According to Tondutti, *Quaestiones de Beneficiis*, Book I, chapter 104, paragraph 12, a custom of this kind can be proven in the following manner: "In matters of this nature, it was not established that the rights of

Translated by churchlatin.ai, a product of Boyne Archives

the Chapter were involved, to whom the burden of proving a title or an immemorial possession belonged, as expressly stated in chapter 1, concerning prescription, paragraph 6. For the immemorial proof thereof, it was necessary that witnesses should testify that they had seen, for forty years prior to the dispute, [evidence of the custom]; and that they had heard from their ancestors, who had heard it from their ancestors; and that neither they nor their ancestors had seen or heard anything to the contrary; and that there had been a public voice or reputation to this effect, using these words..." (Ludovicus, decision 196, paragraph 1... Acts, Volume VII, page 79, paragraph 27).

[*Latin ed. p. 418*]

418 Concerning tithes: "For it is not said to consist of an immemorial custom, unless all witnesses are conform and consistent in all the aforementioned requirements..." Furthermore, from the five witnesses whom the Parish Priest presented, not one even testified according to these points. But another argument was used by the family N to deter the Parish Priest from collecting tithes; since the vineyard was located outside the parish boundaries, they argued that the Parish Priest could not be considered a universal tithe collector, but only a particular one. Moreover, it is the characteristic of a particular tithe collector to prescribe only what he possesses, so that if the species of fruit changes, he has no right to tithe the new species of fruit. Indeed, Pitonius, along with other authors, in *Disputationes Ecclesiasticae* 123, no. 13, states: "This distinction between a universal and a particular tithe collector concerns this effect: whether, if new fruits are produced from new plantings, or if, in place of the old ones, others are substituted by the owners of the property, the tithe is due or not on the new plantings or the species of fruit substituted. If it is a question of a universal tithe collector, it is due; otherwise, if the tithe collector is particular, who has obtained the right to tithe the fruits of the property by privilege or prescription, because the tithe is not due from new fruits according to the first case, nor from those substituted according to the second." The reason is, "only what is prescribed is tithed according to what is possessed," so that if someone prescribes a tithe on wine, if the land becomes suitable for growing grain, he will not have the tithe on that land of Fondi; Rebuffini, *De Decimis*, quaest. 6, and others. Finally, whatever hypothesis is made, the matter of tithes cannot be resolved until the Parish Priest concurs in the enormous expenses incurred by the family N to improve the land: these expenses, it was said, amounted to 14,000 livres; for it is unjust not to disclose to the owner of the land that which is useful to the same Parish Priest.

THE RIGHTS OF THE PARISH PRIEST. At the beginning, the Parish Priest S, with a document from the year 1797, showed that his parish had formerly been much larger, and that it included within its boundaries also

Translated by churchlatin.ai, a product of Boyne Archives

the land of Fondi.

[*Latin ed. p. 419*]

In the parish of N, there are 419 families subject to the tithe. However, assuming this to be the case, no difficulty arises from the fact that the land in question lies outside the boundaries of the parish. On this matter, Reiffenstuel, *J.C.*, title on Tithes, no. 104, wrote: "When a parish is divided into several [parishes], then the tithes from land also belonging to the newly erected parish pertain to the mother church, or rather, they remain [with the mother church], unless the Bishop, together with the boundaries, expressly assigns the tithes from these boundaries to the new parish priest... Indeed, from the very words of the Council of Trent: 'After giving the bishops the power to erect new parishes through division, it immediately adds: To those priests who will be in charge of the newly erected churches, a portion shall be assigned at the bishop's discretion from the fruits belonging to the mother church...' Furthermore, these words, 'a portion shall be assigned at the bishop's discretion from the fruits in any way belonging to the mother church,' clearly indicate that it is not always necessary for the bishop to assign all the tithes from the boundaries of the new parish to the new parish priest, but only those that are sufficient, together with other rights, to provide a proper portion." Therefore, assuming that the land in question was formerly within the boundaries of the parish of S, no difficulty can arise regarding the right to collect the tithe, even if it is now located outside the parish boundaries. However, the parish priest has demonstrated a long-standing custom of collecting tithes from the same land; this is shown by several documents from the past century, which, while clearly indicating the collection of tithes, also contain the words "as has been the custom from time immemorial." The parish priest further demonstrated that the opposing argument is irrelevant, for he stated that it is established that not only has the tithe been collected from grain, flax, and hemp from time immemorial, but also from wine, up to one-twentieth, and that this is the very tithe that is now being sought, as it was previously. Furthermore, it is pointless to introduce a distinction between a universal and a particular tithe, as if this were relevant.

[*Latin ed. p. 420*]

The tithes of 420 maris [a unit of land measure] should be assessed only on the produce and not on the land itself; therefore, a prescription cannot extend from one type of produce to another. For the parish priest is, by law, a universal tithe collector, not only within the present boundaries of the parish, but also within the ancient boundaries, so that the mother parish suffers no detriment to its right of tithe, if, by the ministry of law, the right of tithe is not limited. Reiffenstuel, loc. cit.; Cardinal de Luca, *Disputationes de Decimis*, 12; and especially the Holy Rota in Hispalis, in the

Translated by churchlatin.ai, a product of Boyne Archives

case of *Decimarum*, November 27, 1671, before Bourlomont, in which it is stated that, after divisions, the tithes are still collected, and that in the bull of division, no provision was made concerning the tithes in favor of the divided part, or indeed, that the bull of division should be understood in such a way that nothing has been changed regarding the right of collecting tithes. Furthermore, the parish priest should not be required to contribute to the expenses of planting and cultivating a vineyard, since the text of canon law clearly excludes this. It is written in chapter 22, concerning Tithes: "We will and strictly command that, before any expenses are deducted from the aforementioned goods, the tithes due to the churches to which they belong be paid in full." And similarly, in chapter 26 of the same title, in the *Dubium*: "Whether and how the parish priest has the right to collect tithes on wine in this case?" RESOLUTION. The Holy Congregation of the Council, having considered the case in the meetings held on December 14, 1872, decided to respond affirmatively, according to one-twentieth of the income. FROM WHICH YOU MAY GATHER: I. The parish priest has a legally founded intention of collecting land tithes within the boundaries of his parish. 1. See the case concerning Tithes in the Holy Council of Bishops and Regular Canons, which you have in Volume I, page 619 and following.

[*Latin ed. p. 421*]

Decimates 421. Therefore, by law, insofar as he is a parish priest, he is not a particular tithe collector in any specific type of produce, but a universal one, regarding any type of produce from lands existing within the boundaries of the parish. III. When this real right belongs to the parish priest, the burden falls upon the one who claims to have been absolved from paying tithes to demonstrate that he has indeed been absolved. IV. Such a right to collect tithes does not cease or change its nature if, after a division of the parish, some land that was formerly tithe-bearing remains outside the boundaries of the original parish: for the real right burdening the tithe-bearing land does not change with a different administration of the parish; since the division of the parish only introduces a different administration of the assets. V. The parish priest, as tithe collector, should not be required to compensate in any way for expenses incurred on the land by the owner, since the very nature of the right to collect tithes, which the parish priest possesses, consists in receiving a portion of the fruits that the land produces, whatever its cultivation may be.

I. It is not uncommon to hear people publicly say that we no longer live in the time of tithes, implying that the Church's practice of collecting tithes was somehow a period of ignorance and, as they say, a regression. Such people should be considered ignorant of the affairs of the Church. For the payment of tithes in the Christian community was a most excellent means by which divine worship was provided for. Since the Christian people are obligated, whether they will or not, to provide for divine worship, they

Translated by churchlatin.ai, a product of Boyne Archives

could not devise anything more equitable and fitting than that those who receive fruits from the land by the grace of God should return a portion of these fruits and firstlings to God Himself; by this Christian act, they would profess the supreme dominion of God, and giving thanks to the supreme distributor of goods, they would receive a blessing precisely by fulfilling their duty to the Church. What, however, has been substituted for tithes in our time, or is intended to be substituted? Hear a matter worthy of progress! The faithful, whether rich or poor, cannot enter the temples unless they satisfy a prepared collector who insists that they pay: if you want a seat in the temple, you must pay, and so on. It is easy to understand the consequences of this: the temples are not open without some impediment, and a distinction is created in the temples between rich and poor faithful. This occurs in those progressive regions where there are those who, as if it were a matter of an uncivilized society, publicly disparage the right of tithes, which has been prevalent in the Church for so many centuries. And they seize upon this opportunity to boast of their cleverness. Surely, is this not ignorance of the affairs of the Church?

[*Latin ed. p. 422*]

Decimarum 422 VL. In hoc casu, cum Parochus contradicas exceptiones repellat, satis est demonstratum quod consuetudo immemorabilis est decimas ex fundo litigioso, et etiam decimam vini, percipere. VII. Praeterea, colligitur quod qui ad tribunal laicum recurrit in causa ecclesiastica, ut forum ecclesiasticum declinet, incurrit excommunicationem, quae infligi potest per Constitutiones Apostolicae Sedis, et quae modo speciali Romano Pontifici reservata est. 1 DE IURISDICTIONE PAROCHIALI. Die 17 Augusti 1872. Compendium facti. In confinio duarum paroeciarum extra urbem N, erant nonnullae domunculae suburbanæ, quas municipium demolivit. Domunculae eiusmodi erant sub cura paroeciali Plebani S. Ioannis. Sed domus quaedam demolita fuit tantum ex parte, et eius dominus Ubaldus, ea occasione, domum illam auxit, longius eam protractans in hortum conterminum; et in eodem horto ianuam posuit, per quam non solum aditus patebat in novum aedificium extructum, sed etiam in veterem partem domus, quae ex demolitione supererat. Hoc novum aedificium, in contermino horto extructum, est causa praesentis controversiae. Nam cum consideramus in con1 In Constitutione Apostolicae Sedis, hi articuli continentur: « Illi qui directe vel indirecte impediunt exercitium iurisdictionis ecclesiasticae, sive forum internum, sive externum, et ad hoc ad forum saeculare recurrunt, eiusque mandata procurantes, edentes, aut auxilium, consilium vel favorem praestantes». Item: «Illi qui ad potestatem laicam recurrunt ad impediendas litteras vel acta quaelibet a Sede Apostolica...». Parochus autem, recurrens ad laicum tribunal, indirecte impedit exercitium iurisdictionis ecclesiasticae; deinde, causa pendente apud S. Sedem, curavit quoque impedire S. Sedis iudicium. Quo autem sensu Decimae sint res quae pertinent

Translated by churchlatin.ai, a product of Boyne Archives

ad iudicium ecclesiasticum, vides citatam causam Decimarum in Vol. I, p. 622 et auctoritates ibidem allegatas.

[*Latin ed. p. 423*]

Jurisdiction!! In the year 1823, a dispute arose concerning a house located between two parishes, regarding which parish it should belong to. The house in question, as I mentioned, was under the care of the Pleban of St. John, who still maintained that it belonged to his parish. This Pleban is a Vicarious, removable at the will of the Cathedral Chapter, to which that rural parish, or Plebania, is subject. On the other hand, the Paroch of St. Secundus claimed that the new building had passed into the pastoral care of his parish, and that Ubaldo and his family were his parishioners. The Bishop resolved the dispute, after a preliminary examination, and having heard the report of the appointed Architect regarding the boundaries of the parishes, he issued a judgment, stating that the new building did not belong to the pastoral care of the Pleban, but rather to that of the other Paroch, St. Secundus. When the Pleban finally appealed this judgment to the S. C. C. [Sacra Congregatio Consilii], observing the customary procedures, the dispute was again debated. A synopsis of the debate follows. Two points of contention are presented at the end, because two disputes have arisen, one incidental, the other principal. DEFENSE OF THE PAROCH OF ST. SECUNDUS: Firstly, this Paroch (whose position was supported by the Bishop's judgment) argued that the Bishop's judgment should not admit of an appeal, because the Canons had previously stated that he did not wish to challenge the formal judgment, but was prepared to submit to the arbitral judgment of the Bishop; furthermore, it is established that, when a judgment is entrusted to the arbitration of someone, the parties must abide by the judgment of the arbitrator, whether it be just or unjust, provided there is no fraud, [reference to a legal text, likely from the Corpus Juris Civilis or similar]. Here, it is written: "He said, 'But he must abide by the judgment, whether it be just or unjust.'" Also, [reference to another legal text], it is possible for the judgment of the arbitrator, even if it is unjust, to be upheld, provided that the matter has been submitted to arbitration, and the arbitrator has acted fairly; because it is not written: "After having been judged, it is not to be appealed."

[*Latin ed. p. 424*]

424 "The jurisdiction of the parish can be exercised, and indeed, a penalty is promised to those who, through fear of it, do not adhere to its judgments." Furthermore, the same Parish Priest argues that there is no appeal from any other source, that is to say, because the Pleban has appealed, who is merely a Vicar removable at the will of the Cathedral Chapter. He maintained that if the Vicar appeals without the mandate of the Chapter, his appeal should be rejected. Indeed, Pirhing, in *Titulus

Translated by churchlatin.ai, a product of Boyne Archives

de Vicariis*, § *de Vicariis temporalibus*, no. 21, states in agreement with other authors: "A temporary Vicar does not have the same standing as a beneficiary, because he does not possess the title and the right of the parish, as does a perpetual Vicar, but, with the parochial right and the care of souls remaining with the principal Rector, the Vicar only exercises it not in place of, but by commission and in the name of the principal Rector." Moreover, even the perpetual Vicar does not have the power to exercise the law in matters pertaining to contentious proceedings, as Pirhing states in *loc. cit.*, § *de Vicar. perpet.*: "Furthermore, what is said about the actual care of the parochial church being accessory and perpetually united to another benefice, assigned to a perpetual Vicar constituted therein with a certain portion of revenues, is to be understood in such a way that the exercise of the parochial right in spiritual matters and those pertaining to the care of souls, or the internal forum, pertains to the Vicar; but in those matters which pertain to the external defense, the vindication of parochial rights, and therefore to the contentious forum, the exercise of the parochial right pertains to the principal Rector, at least if he receives the greater part of the revenues, because the chapel or parish united, as far as property is concerned, is said to belong to the principal Rector, not to the Vicar." And a little further on: "For those rights of the church which remain with the principal Rector, the perpetual Vicar cannot act unless he has a mandate from him." With these points established, there is no appeal to be made, and the Bishop's judgment has passed into law. Regarding the principal question, the Parish Priest argued, assuming the hypothesis of a valid appeal, that...

[*Latin ed. p. 425*]

Regarding the parochial jurisdiction, with 425 ancient documents presented which refer to the original circumscription of parishes, and based on the testimonies of expert men who were delegated to this present judgment for this purpose, so that, from topographical indications, they might most clearly declare what the boundaries of the parishes were in former times, it was argued that the new building of Ubaldi had crossed the boundaries of the old parish and had entered into their parish with its gate, which led to the old building: and therefore, that the house of Ubaldi had passed into their parochial care. This is sufficient to indicate, when dealing with this complex typographical question, the explanation of which would be of no utility to our readers.

DEFENSE OF THE PLEBANO. Here, on the contrary, concerning the incident in question, he noted that the appeal interposed by him, although made from the beginning without mandate, had been considered valid by the Chapter through a formal capitular decree, by which decree the appeal also proceeded. Concerning the other incident in question, he noted that no arbitrator can be constituted voluntarily except through a compromise of

Translated by churchlatin.ai, a product of Boyne Archives

the parties; but that a compromise is entirely lacking in this case, since the Parish Priest of St. Secundus, in order to demonstrate that the Bishop had established an arbitrator, has presented nothing other than that the Canons, from a public declaration, stated that they were willing to abide by the decision of the Bishop: whereas, on the contrary, he himself should have agreed to a compromise and should have presented the compromise itself; which he cannot present, because it was never made. For a compromise consists in the fact that the parties in dispute may promise, simultaneously and mutually, a penalty if they do not abide by the judgment of the arbitrator; and the arbitrator is a judge freely chosen by the consent of the parties, for the purpose of resolving the dispute. Therefore, since a compromise is lacking, it is futile to invoke the laws regarding arbitrators.

I. But, returning to the principal matter, the Chapter affirmed that a new house had been constructed in a garden adjoining the pre-existing house of Ubaldi, and that through this pre-existing house, the new house is connected to *SpiÅ¡skÃ© Vlachy*, which *SpiÅ¡skÃ© Vlachy* is under the care of the Plebano: and therefore, as part of *SpiÅ¡skÃ© Vlachy* itself, it belongs to his.

[*Latin ed. p. 426*]

The parochial rectory's jurisdiction extends to the area, just as an accessory belongs to the principal. Furthermore, the very garden, in which a small building once stood, has always been under the care of the rectory; therefore, having established this fact, it follows that this garden, according to its original boundaries, did not belong to the rectory. However, due to a confusion of boundaries, it now belongs to the rectory by prescription. Moreover, certain topographical indications demonstrate that a new house has been built within the boundaries of the rectory, the Chapter affirmed. It has been observed that, based on numerous documents presented, it is sufficiently clear that a new house has been built outside the boundaries of the rectory. Furthermore, this new building has its own entrance within the aforementioned garden; this fact is of such importance that Ferraris, *Bibl. can.*, under the word "Parochia," number 37, citing the authority of many doctors, states: "When someone lives on the boundary between two parochial churches, he is considered a parishioner of that church in which his house has more frequent access." It cannot be invoked that the prescription of boundaries, as addressed in Canon 4 regarding Parishes, where Urban III responded in this manner: "Regarding what you understand to be a doubt concerning whether the law established by the canons regarding things that are not to be prescribed applies to the boundaries of parishes, just as it does to provincial boundaries, we respond that it seems to be preserved in both cases, if the boundaries have been established by legitimate proof, or by other unquestionable ecclesiastical authority." Pirhing embellishes this text in book 3, title 2, section 2: "Can the boundaries of parishes

Translated by churchlatin.ai, a product of Boyne Archives

be prescribed? To this question, it is answered, just as the boundaries, or limits, of provinces and dioceses cannot be prescribed according to the law, so neither can the boundaries of parishes and those things that adhere to those boundaries, as is established in Canon 4 regarding Parishes... The reason is, so that the dioceses or provinces and the parishes..."

EA QUAE E X OFFICIO SUNT ADIECTA.

[*Latin ed. p. 427*]

Parochial Jurisdiction 427 "The boundaries are confused, cf. Quicumque, 4 and 3 seq. reason 16, "q. 3, and so that no one may usurp the boundaries of others, c. Inter 6 ibid. causes. "and the question. For otherwise, by the authority of each private individual, with the old ones removed, new boundaries would be established everywhere, and both in matters of jurisdiction and in other matters pertaining to public authority, frequent opportunity would be given for uncertainty and confusion. Therefore, the boundaries or limits of this kind, established and distinguished by public authority, must be immutable and it is rightly prohibited to prescribe them, Barbosa in Collectanea loc. cit. n. 2...". Doubts. I. "Whether it is established by law to appeal in this case. And to the extent that it is affirmative: II. "Whether the opinion of the Bishop is to be confirmed or rejected in this case." RESOLUTION. The Sacred Congregation of the Council, having knowledge of the case on August 17, 1872, decided to respond: To I. Affirmative. To II. The opinion is to be confirmed. From WHICH YOU MAY GATHER: I. That an appeal interposed by one who does not have the mandate to appeal from the lord can have full value if it is subsequently ratified by the lord. For that which we do in the name of another is equivalent to a mandate if ratification is added. II. Especially if it is in the interest of the one who appeals that the appeal be made, which in the case is not entirely foreign; such as the Parish Vicar in matters pertaining to the temporal rights of the parish, although this burden belongs to the Rector principal. III. Without a compromise, which consists of an agreement, a voluntary judgment is not given which defines the matter according to the law, nor an arbitrator who defines the matter according to what is good and just, although one of the litigants may approach the Ordinary as an arbitrator:

[*Latin ed. p. 428*]

I. The parochial jurisdiction, and therefore, in the absence of an agreement, cannot invoke the rights established concerning arbitrators.

IV. The limits of dioceses and parishes, once defined by ecclesiastical authority, cannot be altered by private authority; indeed, they cannot be changed, especially when documents clearly indicate what those limits were originally.

Translated by churchlatin.ai, a product of Boyne Archives

V. A house built within the limits of a parish belongs to that parish in whose territory its principal entrance is located.

1. We read in the excellent Neapolitan publications, entitled *La scienza e la fede*, in the June 1873 issue, the following response from the Sacred Penitentiary: "Since the Syndic of Naples had decreed that all Neapolitan clocks, with the exception of a few private ones, should use the average time of Rome in indicating noon, it happened that midnight differs not only in terms of average time, but also in terms of the different meridians of both cities, so that the difference sometimes exceeds a quarter of an hour. Therefore, the Archbishop, Cardinal Ennius, asked the Sacred Penitentiary: 'Considering these circumstances, should the faithful in Naples, in fulfilling the natural fast and other ecclesiastical obligations, adhere to the clocks that indicate the hours according to the average time of Rome, or should they follow those that indicate the hours according to the true time of Naples?'

2. See the case of the Association and funeral emoluments from the Sacred Congregation of Bishops and Regular Canons, which you have explained in Volume IV, pages 598 and following. In Latin, it reads: "Considering these matters, can the faithful in Naples, in observing the natural fast and other obligations of the Church, follow the clocks that..."

[*Latin ed. p. 429*]

From the Sacred Apostolic Penitentiary 429: "To the Most Reverend in Christ, to the Most Reverend Cardinal Archbishop, after mature deliberation and exposition, the RESPONSE: Regarding the question posed concerning Naples: To the first part, an affirmative answer; to the second part, a negative answer." Given in Rome, in the Sacred Penitentiary, on the 8th day of June, 1873.

FROM THIS RESPONSE, ONE MAY GATHER:

I. That the faithful ought to follow the public clocks which indicate the mean time (which, in one part of the year, precedes the true time, and in another part of the year, follows it), even though there are not lacking private clocks which indicate the true time, because of the natural fast, the ecclesiastical fasts, and other offices of the Church. This is so, even though the public clocks do not indicate the true time.

II. This also applies if the clocks indicate not their own meridian, but that of another place, even though this time may be more distant from the true time.

III. For in the designation of time, the Church follows that rule which directs all human affairs in each place publicly.

"Should the hours be indicated according to the mean time of Rome, or rather, should one follow those clocks which indicate the true time of Naples?"

Translated by churchlatin.ai, a product of Boyne Archives

The case proposed brings to mind another case of this kind, which was presented to the Holy Congregation of Sacred Rites in a certain matter concerning a mission in [Kosso], which you have in Volume III, page 602 and following. In that case, the question was asked: "Can ecclesiastical persons, who reside in regions beyond the polar circle, where, during the summer, the sun never sets for several weeks, nor, conversely, rises during several weeks in the winter, follow the Roman meridian in performing divine services?"

The Holy Congregation responded on February 6, 1858: "According to the opinion of the astronomer, Father Secchi." The opinion of this most distinguished astronomer is reduced to this: that, while maintaining the distribution of hours according to the Roman method, the meridian should be determined by the transit of the sun in the local meridian; and if one were to follow the mean time, the usual equation of mean time should be added. The transit of the sun through the meridian can always be determined, in summer by the greatest altitude of the sun, in winter by the greater brightness of the twilight, or even better, by the observation of the stars; for there is no inhabited place, nor can there be a stable inhabited place, within the polar circle, in which someone cannot use this means to determine the local meridian.

[*Latin ed. p. 430*]

430 APOSTOLIC LETTERS. By the divine Providence of the Most Holy Father and Lord, our Lord Pius IX, Pope, a Constitution concerning Vicars Capitular, as well as those elected and designated for vacant episcopal sees. PIUS, BISHOP, SERVANT OF THE SERVANTS OF GOD, FOR THE EVERLASTING MEMORY OF GOD'S AFFAIRS. "The Roman Pontiff, by the office divinely conferred upon him of governing and directing the entire Church of Christ, not only strives to urge the observance of the Sacred Canons, but also to declare their certain and authentic meaning, so that, should any doubt arise concerning something, no opportunity may be given for diverse interpretations, and thus the unity of ecclesiastical discipline may not be broken, to the great detriment of the order of the Church.

"Indeed, according to the ancient discipline of the Church, when an episcopal see is vacant, the administration of the diocese devolves to the Cathedral Chapter; which, formerly, could administer the diocese by itself, for the entire time during which the see was vacant, or could entrust the administration of the diocese to one or more persons, retaining the power to freely choose those designated, and to delegate to them the jurisdiction, whether with respect to its use or with respect to time, to be restricted and limited.

"But the Fathers of the Council of Trent, observing the very serious inconveniences that were arising throughout, from the administration of the

Translated by churchlatin.ai, a product of Boyne Archives

vacant church entrusted to a gathering of persons of almost every kind, wisely decreed, in order to avoid these, that "the Chapter, "when a see is vacant, is absolutely bound to establish, within eight days after the "death of the Bishop, an official, or Vicar, or to confirm one already existing, "who at least is a doctor, or a licentiate, in Canon Law, or otherwise, as far as possible, suitable. If this has not been done, "the deputation of this kind devolves to the Metropolitan."

[*Latin ed. p. 431*]

Apostolic Letters 431 state, and if the Metropolitan Church itself is vacant, or exempt, and the Chapter, as is fitting, has been negligent, then the senior Bishop from the suffragan sees in the Metropolitan Church, and the senior Bishop in the exempt Church, may appoint a Vicar. "However, this decree has been interpreted in various ways by private writers on canon law. Some have believed that the Chapter could reserve a portion of jurisdiction for itself in appointing a Vicar; others have thought it permissible for the Chapter to appoint a Vicar for a certain time; and there have been those who have considered it permissible for the Chapter to remove the Vicar at its discretion and to replace him with another. "The opinions of these writers have been readily accepted by some Chapters, so that uniformity in this matter of great importance has been lacking, and the purpose of the Trident decree, as stated above, has not been fully achieved. "Although the Most Holy Congregations of the City of Rome have repeatedly rejected these opinions in their responses to cases brought before them, so that it is clear from their responses what the intention of the Fathers of Trent was in issuing the decree mentioned above; nevertheless, since we do not yet see that everything everywhere is being brought into conformity with that intention, we believe it necessary to add strength to those same responses and declarations by adding the authority of the Apostolic See, in order to remove any doubt or ambiguity whatsoever. Therefore, by our own motion, and with certain knowledge and mature deliberation, We declare and decree the following: All ordinary episcopal jurisdiction, which, due to the vacancy of the episcopal see, has passed to the Chapter, shall pass entirely to the Vicar duly appointed by it; nor may the Chapter reserve any part of this jurisdiction for itself, nor may it appoint a Vicar for a definite and limited time, much less remove him, but he shall remain in office until a new Bishop receives the Apostolic Letters, concerning the granting of the episcopate to him, to the Chapter, according to Boniface VIII, Session 24, chapter 16, De Reform.

[*Latin ed. p. 432*]

Letters 432 Apostolic. 1. If the Predecessor of Ours has not presented the Constitution, or if a Chapter is lacking, it shall be presented to him who, according to the Holy Canons, or by a special decree of the Holy See,

Translated by churchlatin.ai, a product of Boyne Archives

administers a vacant diocese, or who is appointed as its Administrator, or Vicar. "Therefore, no limitations whatsoever shall be observed, either with regard to jurisdiction, or with regard to time, that have been imposed by the Chapter upon the election of a Capitular Vicar, so that, notwithstanding this, once the office has been duly conferred upon him, he shall freely and validly exercise the entire ordinary episcopal jurisdiction for the entire time that the Episcopal See is vacant, until the new Bishop presents his Apostolic and canonical Letters of institution, as we have said. "On this occasion, We also declare and decree that those things which Our Predecessor Gregory X established in the Second Council of Lyons concerning those elected by Chapters, also include those nominated and presented by the supreme rulers of public affairs, whether they are emperors, or kings, or dukes, or presidents, or whatever they may be called, who, by the concession or privilege of the Holy See, have the right to nominate and present candidates to vacant Episcopal Sees within their respective jurisdictions; therefore, We abolish, annul, and utterly nullify the practice, or rather the abuse, under any title, or pretense, or asserted privilege, sought under a false pretext, and for any reason whatsoever, even if it is a special and expressly noteworthy one, which has been introduced, especially in certain kingdoms or regions, whereby the Chapter of the cathedral church of the vacant See, complying with the invitation or mandate of the supreme civil power, albeit expressed in supplicatory terms, presumes to grant and transfer the right to nominate and present to that same church a person for its care, governance, and administration, and that person, bearing the name of Provisor, General Vicar, or another name, undertakes to hold that office before the aforementioned presentation."

[*Latin ed. p. 433*]

Apostolic Letters 433. Concerning the granting of Apostolic Letters, as stated above, the customary procedure shall be followed, and therefore the Vicariate Capitular shall be removed. Furthermore, confirming also the decrees and provisions of Our predecessors, especially the decrees and provisions of the Most Holy Pope Pius VII, We declare and decree that, if in the meantime the Vicarius Capitularis should die, or renounce his office of his own accord, or for some other reason the office itself legitimately becomes vacant, then the Chapter, or, if the Chapter is lacking, that body which has the power to appoint an administrator or Vicarius for the vacant church, shall elect a new Vicarius or administrator; but We declare that We annul, nullify, and declare utterly void any election and appointment by the Chapters, or by secular authority, of a person nominated or presented to the aforementioned vacant church, if the Chapter, or another, as stated above, should presume to carry out such an election and appointment.

"We trust that the Dignitaries and Canons of the cathedrals of vacant churches, and those who, in the absence of Chapters, appoint Vicars, or

Translated by churchlatin.ai, a product of Boyne Archives

legitimately administer vacant churches, will fully comply with what has been declared and decreed in these Our Letters; but if, may God prevent it, they should fail to comply with them, and should dare to grant and transfer to the person nominated and presented to the same church the care, administration, and governance thereof under any title, name, or pretext whatsoever, in addition to the nullity already decreed of the aforementioned concession and transfer, We declare that the aforementioned Canons and Dignitaries shall incur the penalty of excommunication majoris, as well as the deprivation of the ecclesiastical fruits of any benefices and other ecclesiastical revenues obtained by them, and shall likewise incur the same penalties, and We decree and declare that they shall incur them; and We reserve to Ourselves and to the reigning Roman Pontiff the exclusive right to grant the absolution or remission of these penalties.

"Those who are nominated and presented to vacant churches also incur these same reserved penalties by the very fact of the act, and those who..."

[*Latin ed. p. 434*]

Lettere 434. Quorumque, qui audent suscipere regimen et administrationem ecclesiastica, per concessione, et translationem a Dignitatibus et Canonicis aliisque, de quibus supra, in eos peractam, nec non ii, qui praemissis paruerint, vel auxilium, consilium aut favorem praestiterint; cuiusque status, conditionis, praeeminentiae et dignitatis fuerint. "Praeterea nominatos, et praesentatos iure, quod eis per nominationem et praesentationem forte quaesitum fuerit, decernimus eo ipso privatos. "Si vero aliqui ex praedictis Episcopali charactere sitit insignati in poenam suspensionis ab exercitio Pontificalium, et interdicti ab ingressu Ecclesiae ipso facto, absque ulla declaratione incidunt, S. Sedi pariter reservatam. "Insuper quaecumque a sic nominatis et praesentatis in administratione vacantium ecclesiarum intrusis fiant, mandentur, decernantur et ordinentur cum omnibus et singulis inde quovis modo sequutis, et quomodocumque sequuturis omnino nulla, invalida, inania, irrita, et a non habentibus potestatem damnabiliter attentata, et de facto praesumpta, nulliusque valoris, momenti et efficaciae esse, et perpetuo fore tenore praesentium declaramus et decernimus, illaque damnamus et reprobamus. "Haec volumus, statuimus, ac mandamus, decernentes has Nostras Litteras, et omnia in eis contenta nullo unquam tempore a nemine cuiusque conditionis, et dignitatis etiam Imperalis et Regiae, sub quovis titulo, quaesito colore, ac praetenso et asserto privilegio, quod si forte sit cassamus et annullamus, infringi, impugnari, vel in controversiam revocari posse, sed semper firmas et efficaces existere et fore, suosque plenarios, et integros effectus semper sortiri et obtinere debere. Non obstantibus Apostolicis generalibus vel specialibus Constitutionibus et ordinationibus, ac Nostris et Cancellariae Apo1 1 Hic obiter nota, eiusmodi censuras specialiter reservatas, adiiciendas esse Constitutioni, Apostolicae Sedis,

Translated by churchlatin.ai, a product of Boyne Archives

sub eo censurarum censu, quas R. Pontifex sibi speciali modo relaxandas reservavit (Nota redactoris ephemeridum).

[*Latin ed. p. 435*]

Letters [issued] according to the rules, especially the Apostolic Constitution concerning the matter in question, number 435, by removing [certain things], and with other matters worthy of special mention, contrary to whatever may be. "We desire that, with the publication of these letters through affixing copies to the doors of the Basilicas of the City, all the faithful, wherever they may be, to whom these apply, who in any way become aware of them, be bound to observe them, as if they had been personally notified of them, since they have been promulgated in Rome, as stated. "We also desire that the same faith be given everywhere to copies or exemplars of these present letters, even if printed by hand, provided they are signed by a public notary and sealed with the seal of a person holding an ecclesiastical office, as would be given to the letters themselves if they were presented or shown. "Therefore, no human being whatsoever may infringe upon this page of our declaration, decision, annulment, revocation, statute, precept, mandate, and will, or dare to contradict it with reckless audacity. If anyone should presume to attempt this, let him know that he will incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul. "Given in Rome, at Saint Peter's, in the year of the Incarnation of the Lord, one thousand eight hundred and seventy-three, on the fifth day before the Kalends of September, in the twenty-eighth year of Our Pontificate." F. Card. ASQUINIUS. G. GORI, Subdatarius. VISITED BY THE CURIA: I. DE AQUILA and the VICEROYS. L. & P. I. CUGNONIUS. Registrar in the Secretariat of Briefs. In the year from the Nativity of the Lord, one thousand eight hundred and seventy-three, on the fifth day of the month of October, in the Indiction I. The Pontificate of the Most Holy Father in Christ, and Our Lord, Pope Pius.

[*Latin ed. p. 436*]

436 Apostolic Letters, by divine Providence, from Pope IX. In the aforementioned year, these Apostolic Letters were affixed and published at the entrances of the major basilicas of the city by me, Vincent Benaglia, Apostolic courier. PHILIPPUS OSSANI, Master Courier. FROM THE HOLY CONGREGATION CONCERNING REGULAR DISCIPLINE, BY DECREE FROM THE HOLY FATHER. 5. Congregation concerning regular discipline, no. 160390. On August 5, 1872. "Concerning the hardships which the Regular Orders have suffered due to the cause of suppression, also obstacles to commerce have arisen between superiors and their subjects. Since the Regular Provinces rightfully belong to the provinces of affiliation, and to those who, having been expelled from the monasteries, were in need of returning to their native homes or distant

Translated by churchlatin.ai, a product of Boyne Archives

lands, it was necessary to grant [them]. Therefore, it proved most difficult, if not impossible, for the moderators of the provinces to oversee and govern them, given the lamentable decline of regular discipline. Therefore, considering that the rights of the Province have been sought for its students (and especially for all and each of them, if and when the superiors of the Province deem it fitting, to be accommodated in the monasteries, or in houses within the Province of affiliation, for the sake of regular common observance, while the suppression continues), the Holy Congregation concerning Regular Discipline has decreed that all Religious, of whatever Order, Congregation, Society, Institute, of whatever grade or condition, as long as, due to the present circumstances, as we have indicated..."

[*Latin ed. p. 437*]

Decree 437: If it should happen that members of a Regular Province, whether in their own houses or elsewhere, reside outside the boundaries of their Regular Province, they shall be subject to the inspection and jurisdiction of the territorial Provincial, who shall report annually, and whenever requested, concerning their conduct and customs to the respective Provincial, and who shall restrain them in the exercise of their office with delegated and full authority. But if the Moderator of the Regular Province himself, for reasons presented, should presume to reside outside the territory of the same Province, he shall be deprived of his office, and another shall take his place, and the superiors of the Order shall provide a different superior for the Province. Concerning the superiors of the provinces and their students, and concerning Abbots, Priors, monks, and converts, and their respective Provinces and monasteries, whatever their exemption may be, the Holy Congregation has decreed the same; to each is forbidden that which is established, if a doubt arises, with the faculty of interpreting according to their own judgment; but in each case, recourse must be had to the Holy Congregation itself. These matters, having been reported to His Holiness, Pope Pius IX, by the undersigned Secretary of the same Holy Congregation, His Holiness approved them, and commanded that they be observed by all those concerned, in virtue of Holy Obedience. These are not hindered by Constitutions, Apostolic Ordinances, or other contrary provisions, even those deserving of special and individual mention." Given at Rome, on the day, month, and year above. F. Card. ASQUINIUS. F. L. DE FALLOUX, Secretary. FROM THE AUDIENCE OF HIS HOLINESS, DECREE. Holy Congregation concerning regular discipline, n. 160391. On August 5, 1872. "Since monks are being violently driven out of monasteries throughout the Italian territories, the Most Holy Pope Pius IX, with paternal charity, came to their aid, and granted them letters from the Holy Penitentiary."

[*Latin ed. p. 438*]

438 The Decrees provide that Superiors General, by a legitimately

Translated by churchlatin.ai, a product of Boyne Archives

granted power, are endowed with numerous privileges, exemptions, and faculties, so that, as long as necessity compels them to remain in the world, they may more easily obtain the means for temporal life, and so that the spirit of the holy vocation may not be extinguished. Meanwhile, the Superiors of Regular Orders, obeying the admonitions of the same Holy Penitentiary, were permitted to gradually gather their subjects into preserved or redeemed monasteries, or into houses purchased or rented. However, it happened that in some Provinces, certain Religious men, otherwise of approved conduct and life, neglected the orders of their Superiors; and the Holy Penitentiary, seeing that they remained, supported by their privileges, unwilling to resume the regular observance to which they had solemnly professed in those houses, resisted. Indeed, they are reluctant to lose the freedom they have in the world, or, hesitating in faith, they believe that the hand of the Lord is shortened over His Church. These matters, having been reported to His Holiness by the undersigned Secretary of the Holy Congregation for the Discipline of Regular Canons, the Most Holy Lord commanded that the Superiors of the Orders, to whom it had been granted, with God's mercy, to restore these houses, should be urged by public announcements, and that they should be encouraged to use prudent counsel in the selection of Religious men, to be diligent in preserving unity in the bond of peace; that they should strive more earnestly to recall the spirit of the Holy Founder by word and example; and that those who are reluctant, without a legitimate and reasonable cause (which We must approve), should be severely admonished, and the judgment of the matter should be made. Furthermore, let these, and generally all and each, who have failed to observe and render due obedience to their Superiors, know that they will be deprived, by this very act, of every exemption, grace, privilege, or faculty, whether granted by letters from the Holy Penitentiary, or by special decrees of His Holiness and the Apostolic See, freely conceded or obtained; for they are deprived of the authority of this Decree. For it does not befit, nor is it advantageous to the Apostolic See, to bestow benefits upon those who, contrary to their own spontaneous declaration, prefer their own interests to the honor of the Church.

[*Latin ed. p. 439*]

Decree 439 concerning living comfortably. Therefore, We command that all Superiors, of whatever Order or Regular Congregation, to whom this Decree pertains, immediately inform themselves of it, and diligently ensure its full execution, in virtue of Holy Obedience. Given in Rome, on the day, month, and year above. F. Card. ASQUINIUS. F. L. DE FALLOUX, Secretary. WITH THE APPROVAL OF THE HOLY FATHER, DECREE. 5. Congregation for Regular Discipline, n. 160392. August 5, 1872. "Alumni of Regular Orders, having been expelled from their monasteries by civil

Translated by churchlatin.ai, a product of Boyne Archives

suppression, have established residences for themselves, wherever circumstances permitted; and there they benefit the faithful people and perform sacred ministrations, and make progress in pious conversation. But some of them, perhaps due to a lack of seriousness of mind and constancy of purpose, and also due to a desire for excessive comforts, travel throughout almost all the provinces of Italy, migrate to foreign regions, and return; they show scarcely any obedience to their Superiors, and absolutely none to the Ordinary pastors of the places where they are. To correct and restrain such a desire for wandering, the Holy Congregation for Regular Discipline has decided and decreed that whoever is constituted in the sacred orders of the Regular clergy, and who leaves, within six months from this time, a diocese without permission from the Ordinary, having received grace and communion from the Apostolic See, shall not establish a residence there, unless for a proven reason, and having received in writing, at a suitable time, permission to leave from both the Ordinary himself and the Regular Superior; otherwise, he shall not dare to absent himself."

[*Latin ed. p. 440*]

Decree 440, suspended by divine authority and enacted at the discretion of this Holy Congregation, shall remain in force, with the reservation of more severe penalties for those who transgress. These matters, having been reported to His Most Holy Lordship, Pope Pius IX, by the undersigned Secretary of the same Holy Congregation, His Holiness approved them and confirmed them. Therefore, We command, in virtue of Holy Obedience, that all Superiors General shall seek out those Religious who are vagrant, of uncertain and unstable residence, and shall bring them into conformity with the form of this Decree, so that they may obtain, and present, within a specified time, proof of domicile, according to canonical sanctions. And if anyone, without the permission of his Superiors, shall extend himself beyond the boundaries of Italy, or even to overseas lands, it has been decreed by this Holy Congregation that he shall be considered to have committed apostasy. Given at Rome, on the day, month, and year above mentioned. F. Card. ASQUINIUS. F. L. DE FALLOUX, Secretary. LETTER TO THE SUPERIORS. Holy Congregation concerning regular discipline, no. 160299. Reverend CIRCULAR TO THE ORDERS. June 28, 1872. Father, "The abnormal condition of the Religious Orders in Italy, due to the civil suppression, makes it increasingly difficult for the Superiors of these Orders to fulfill their grave office. Therefore, this Holy Congregation concerning Regular Discipline will not cease, as far as it pertains to it, to support their authority and to assist their zeal."

[*Latin ed. p. 441*]

Circular Letter 441, to ensure that, wherever the need may arise, a prompt and effective remedy can be provided. Therefore, after carefully

Translated by churchlatin.ai, a product of Boyne Archives

considering the reports submitted by the Superiors in accordance with the Circular Letter of February 16th of the present year, it seemed necessary first of all to separate from the Religious Families those unfortunate individuals who, having lost the spirit of their vocation and the holy fear of God, instead of using tribulation to amend themselves, used it to unrestrainedly indulge in detestable passions. These individuals have proven themselves unworthy of belonging to the sacred order which they dishonor, and they have repudiated the spirit of the Institute. Furthermore, by disregarding all admonitions and qualifying themselves as incorrigible, they are also unworthy of those considerations which the Holy See prescribes, in order to obtain the repentance of the guilty before a sentence of expulsion is pronounced against them. Therefore, this Holy Congregation, at the request of some Superiors General and the vote of its Consultors, implored the necessary faculties from the Holiness of Our Lord, by virtue of which it has decided to proceed summarily with the exemplary expulsion of such individuals, and, deviating from the established practice and formalities set forth in the Apostolic Constitutions, to strictly enforce the consequences of the expulsion against those expelled. In communicating this decision to Your Eminence, I reserve the right to give you further instructions in this matter; and in the meantime, I entrust to you the task of making your Religious Family aware of this, both those present and those dispersed, so that they may be warned against scandalous examples; and also, for the comfort of the many virtuous and edifying individuals who, among the misfortunes of the suppression, have thus far numbered X in the impious company of false brethren. And I pray that God may always prosper [your efforts]. At Your Eminence's pleasure, Rome, June 28, 1872. F. Card. ASQUINI. F. L. DE FALLOUX, Secretary.

[*Latin ed. p. 442*]

Letter 442. CIRCULAR LETTER from the SUPERIOR AUTHORITIES. 5. Congregation for Religious Discipline, n. 160393. Reverend Father, August 10, 1872. "This Holy Congregation sends you certain copies of Decrees issued on August 5th of the current year – namely, n. 160390, 160391, and 160392 – the execution of which, insofar as they concern you, is entrusted to your paternal authority. Regarding the Decree designated as n. 160390, it should be noted that this Holy Congregation did not include any mention of the appointment of special superiors to replace local superiors, since, due to the loss of monasteries and convents, the latter no longer have jurisdiction over the dissolved communities. Because the circumstances of each institute differ, depending on the nature of the institutes themselves and varying according to the places where the religious are dispersed, it was not deemed prudent to prescribe a uniform system and method. Nevertheless, this same Holy Congregation desires and commands that, in the manner most suitable to each institute, superiors be appointed in the individual

Translated by churchlatin.ai, a product of Boyne Archives

cities or districts where individual religious reside; distinct from those who preside over houses where some religious live together according to the instructions of the Holy Penitentiary. These superiors must be chosen by the Provincial and his Definitor (or by the General Curia in those institutes that do not extend or are divided into provinces), and the choice must fall among those religious who have their domicile in that city or district. If any of them enjoy the full confidence of the superiors, these will adopt another course."

[*Latin ed. p. 443*]

Circular Letter 443, designed to achieve the same objective, namely, to establish a Superior who directly oversees, governs, corrects, and supports the various groups of Religious living dispersed in the world. These Religious will render to him the obedience due to a local Superior, and he will fulfill his office, according to the circumstances, with prudent zeal and paternal charity. Communication between the Provincial Father and, in the aforementioned case, the General Father, will be maintained through him. Furthermore, he will have frequent relations with the Ordinary of the place, fostering harmony in the exercise of their respective functions; and if any doubt arises regarding jurisdictional competence, he will resolve nothing without having requested and obtained instructions from the higher Superiors. And he shall be removable at the pleasure of the authority that established him. The Very Reverend Father is responsible for the execution of the aforementioned Decrees, as well as for the observance of these provisions, and will kindly provide this Holy Congregation with an account of his work. "And in this situation, it is noted with regret that the Circular of this Holy Congregation – June 28th of the present year, number 160299 – appeared in the public gazettes; and this, not otherwise than through the indiscretion of someone to whom it was addressed. "May the Lord God always prosper it." At the pleasure of Your Paternity, Rome, August 20, 1872. F. Card. ASQUINI. F. L. DE FALLOUX, Secretary.

[*Latin ed. p. 444*]

FROM THE HOLY CONGREGATION CONCERNING THE NULLITY OF MARRIAGES, of the Council of Trent, dated May 11, 1872. The undersigned, having considered the present case, notes that it presents a certain example by which a procedure according to the sacred canons may be initiated against those most miserable beneficiaries who live shamefully and scandalously. Summary of the facts. In the year 1863, Titius obtained the archpresbyterate, with attached pastoral care, in a certain rural church of Saint Mary, in the Italian diocese of N. Having taken possession, he received into his home, as a servant, a woman of suspicious character. Subsequently, this woman was given in marriage, and he then received another young woman as a servant, who, after a few months, became pregnant.

Translated by churchlatin.ai, a product of Boyne Archives

From this, suspicion concerning Titius grew so much that he lost his good reputation. Having been admonished both by friends and by the Ordinary to dismiss her immediately, after a considerable time, he dismissed her. Nevertheless, he received a third woman as a servant, a woman thirty years of age, whose husband was imprisoned, condemned by the court for the crime of theft. Almost all eyes were turned upon this woman, who was considered to be living as a prostitute. But when the time came for this dishonorable woman to be intolerable in the parish, some parishioners reported the matter to the Vicarius Capitularis, so that this great evil might be remedied, urging the parish priest to expel such a woman, although they did not say anything against the morals of the aforementioned parish priest. After these things, the Vicarius Capitularis admonished him once and again to dismiss such a woman; but since he did not comply, but rather prevaricated, on June 19th, and September 2nd, 1868...

[*Latin ed. p. 445*]

Regarding the decree of the 445th and 15th of February, 1869, proper warnings were duly given, so that the aforementioned woman might be dismissed from her service and expelled from the parochial house within fifteen days "from the present notification," under penalty of suspension from the parochial office if she "does not obey this command, which is brought to your attention with the presence of witnesses." Having given these warnings, the Parish Priest gave no sign of obedience. Therefore, on the 23rd of February, 1869, the Vicar Capitular ordered that the Chancellor proceed with the process, or that he summon three heads of families from his parish, as well as others whom those same witnesses might indicate. The Chancellor carried out this order, and, after examining and having sworn in the witnesses, it was established that Titus had a shameful relationship with the aforementioned women. Therefore, after considering the matter, on the 11th of May, 1869, the Vicar Capitular decreed as follows: "We hereby suspend the Archpriest Titus for five years from the office of Parish Priest of St. Mary, depriving him from this day of all spiritual jurisdiction over the people of his parish, as well as of all right to receive any parochial revenues, whether certain or uncertain, and of the use of the parochial house, from which he must immediately move, and also from any house within the region of the same parish. Furthermore, we declare and decree that this suspension and deprivation shall last for the said period of five years, reserving to ourselves or to the Ordinary for the time being the power to extend it for the entirety of his life, if the aforementioned Titus does not return to a good and righteous way of living. Finally, we suspend him from celebrating Mass until he demonstrates to us that he has left the parochial house and the entire parochial territory, and that he has separated himself from the woman N., so that he has ceased all relations with her, and that he has spent ten days in spiritual exercises." After this

Translated by churchlatin.ai, a product of Boyne Archives

decree was issued and announced, the Parish Priest immediately protested on the 25th of May: "against the irregular and unjust decree issued by the Vicar Capitular on the 11th of May..."

[*Latin ed. p. 446*]

446 The decree of nullity declared, "damage due to calumnies from some malicious accusers." However, in the same act, he declared, "that, moved by a sense of veneration and obedience towards the authority of the Church, he had dismissed the aforementioned woman from her office, with the promise of avoiding her forever, and that he would observe ten days of spiritual exercises in that place and at that time, as the Vicarius Capitularis would indicate." Having made this protestation, he turned to the Metropolitan Curia, to request that the decree be revoked or at least amended. And he presented several testimonies from parishioners that were favorable to him; to which he added those given by two civil Syndics, as well as by neighboring parish priests and others, regarding the account of his laudable life and his good morals. But these were opposed by the Curia Vicarii Capitularis with some contrary testimonies from laymen, priests, and parish priests, in which Titius's honor was brought into disrepute. The General Vicar of the Metropolitan Curia, having considered all the acts of the Episcopal Curia, having heard Titius and his defense, pronounced a sentence, fully supported by his reasons, which concluded thus: "Archpriest Titius did not wrongly appeal from the decree of May 11th, issued by the Vicarius Capitularis N., and also rightly declared the aforementioned Vicarius Capitularis guilty of a crime; nor did he exceed in imposing the penalty, and therefore, rejecting the request for appeal, we confirm and confirm the decree of May 11th, ordering that, after notification of this sentence, the aforementioned decree be put into execution in its entirety and form, and also condemning Archpriest Titius to pay the expenses of the present judgment." After such a sentence, Titius immediately appealed to the Holy See, and the appeal presented to the Sacred Congregation for Causes of Saints was, according to custom, sent to the Vicarius Capitularis for information, after the Fiscal Promotor had been heard in writing, the proceedings were transmitted, and other documents relevant to the matter were presented. After the proceedings and the opinion of the Fiscal Promotor, who adhered to the sentence of the Vicarius Capitularis, the decree was issued in the Secretariat of the Sacred Congregation for Causes of Saints on November 27th, with the usual words.

[*Latin ed. p. 447*]

Let it be noted on page 447 the nullity of the decree, by which it is signified that the cause is restricted, and the cause to be examined is proposed in the full Congregation. Meanwhile, the parish priest established a lawyer

Translated by churchlatin.ai, a product of Boyne Archives

in Rome for his defense. A summary of the discussion. The defense of the parish priest. The advocate argued extensively that the decree should be declared invalid; he also argued that for the validity of the same decree, it was required that the names and statements of the accusers or witnesses against the parish priest, the accused, had been publicly announced: 2° that it should be shown that a public bad reputation preceded; 3° that a defense had been granted to the accused parish priest. To demonstrate these points, he cited chapter 24 on Accusations, from the Council of Lateran under Innocent III, in which the Pope, when establishing a solemn process, especially against Church prelates, decreed, among other things, the following: "But when anyone has been *infamatus* for his excesses, so that a clamor arises, which cannot be concealed without scandal, or tolerated without danger, without any doubt of scruple, an inquiry and punishment of his excesses should be undertaken, not from the foment of hatred, but from the affection of charity; so that if the excess is grave, although he is not degraded from his order, he should nevertheless be removed entirely from his administration: which is according to the Evangelical sentiment, to remove the villager who cannot render a proper account of his stewardship. Therefore, an inquiry must be made, unless he himself is present to defend himself against the stubbornness he has shown by being absent, and the chapters about which the inquiry is to be made must be made known to him, so that he may have the opportunity to defend himself, and not only that, but the very names of the witnesses must be made public (so that they may appear) and legitimate exceptions must be admitted, so that, by suppressing the names, a false accusation is not made, and by not mentioning the statements, the legitimate exceptions and replications are excluded.

[*Latin ed. p. 448*]

448 Regarding nullity: To the decree "audacia praebeatur," the Prelate must give so much the more diligence in correcting those who have deserted the correct path, lest those whose excesses are tolerated be excused, and indeed, lest, through a certain leniency, the denunciation, which is a legitimate and charitable means of preventing judgment, be rendered ineffective. Therefore, in three ways, a diligent warning must be given to those who are gravely culpable: first, through the investigation of the accused themselves; secondly, as the accused and denouncers are, as we believe, easily influenced by clamorous insinuations, caution must be exercised; thirdly, the form and the summary must precede the sentence, so that, according to the established order, they may be able to freely defend themselves.

Furthermore, the Orator contends, in the entire series of acts which the Vicarius Capitularis presented to the Sacred Congregation of the Council, that there is no trace of the publication of such names, nor of the testimony of witnesses or accusers, nor of any defense granted to the Parish Priest.

Translated by churchlatin.ai, a product of Boyne Archives

But since, in the process instituted through investigation, public defamation must precede, according to the words of the cited chapter, the Orator asserted that defamation did not precede the investigation, since the very accusers, in their complaints, wrote: "that they, however, were complaining not about the Parish Priest imputing to him wicked morals, who, under any other respect, would be worthy of the highest commendation, but only about his obstinacy in keeping the servant N. in his house." And if those same accusers, when called as witnesses, testified differently in court, they should be rejected, since they contradict themselves; all the more so, since, in the opinion of all the parishioners, they were detractors, liars, irreligious, and criminals. Furthermore, their testimonies were refuted, both by the ample testimony of four neighboring Parish Priests, by which the honesty and good morals of the Archpriest were commended; and also by the testimony of many others...

[*Latin ed. p. 449*]

The decree of the 449th parish, along with some Syndics, who, with one voice, approved of its validity. Therefore, the nullity of the decree must be declared, and the parish must be reintegrated, with the restitution of fruits and the reimbursement of expenses and damages, as in the case of the Absolution of June 10, 1848, which was discussed before the Sacred Congregation of the Council.

DEFENSE OF THE DECREE, OR THE OPINION OF THE METROPOLITAN CURIA.

It has been noted that, in proceedings of this nature against Clerics, it is permissible to admit concubinage, according to the prescription of the Council of Trent, chapter 14, session 23, concerning Reforms. The Holy Council of Trent decreed in chapter 14, session 25, concerning Reforms:

"How disgraceful and unworthy it is for Clerics, who dedicate themselves to divine worship, to be involved in the filth of impurity and the abominable practice of concubinage, this fact itself testifies to the offense of all the faithful and the great disgrace to the clerical state. Therefore, that the ministers of the Church may be restored to that chastity and integrity of life which is fitting for them, and that the people may learn to respect them all the more, knowing them to be men of honest lives: the Holy Synod prohibits all Clerics from keeping concubines or other women, concerning whom suspicion may arise, in their homes or elsewhere, or from daring to have any intercourse with them; otherwise, they shall be punished with the penalties prescribed by the sacred canons or the statutes of the churches. If, after being warned by their superiors, they do not abstain from such practices, they shall be deprived of one-third of the fruits, revenues, and emoluments of their benefices and pensions, which shall be applied to the

Translated by churchlatin.ai, a product of Boyne Archives

fabric of the church or to another pious purpose at the discretion of the Bishop. But if, persevering in the same offense with the same or another woman, they have not obeyed the second warning, they shall not only lose all the fruits and revenues of their benefices and pensions, which shall be applied to the aforementioned places, but they shall also be suspended from the administration of their benefices, as the Ordinary, even as a delegate of the Apostolic See, may judge it necessary; and if, while suspended, they do not expel the woman, or if they continue to associate with her, they shall be perpetually deprived of all ecclesiastical benefices, portions, offices, and pensions, and shall be declared incapable and unworthy of all honors, dignities, benefices, and offices in the future, until, after a manifest amendment of life, their superiors, having considered the matter, deem it expedient to grant them dispensation. But if, after having once dismissed such a woman, they dare to renew the illicit relationship or to associate with other women of a similar scandalous nature, they shall be excommunicated by the sword of excommunication. No appeal or exemption shall impede or suspend the execution of the aforementioned penalty, and knowledge of all of the above shall pertain to the Bishops themselves, who may proceed without pomp and circumstance, and solely by examining the truth of the facts. Clerics who hold ecclesiastical benefices or pensions..."

[*Latin ed. p. 450*]

In the Decretal of Utility 450, and specifically in chapter 6, session 21 concerning Reforms, it is prescribed: "After having been warned and remaining incorrigible in any matter concerning the sacred canons, those who have lived shamefully and scandalously ought to be restrained by all means, and if they persist, they shall be punished, deprived of their exemption, and if they still hold benefices, they shall be removed from them, according to the appellation." Furthermore, it is stated that before these measures are taken, three warnings must have been given, and if the Archpriest does not heed these warnings, the Vicar Capitular may proceed to temporal penalties. Therefore, considering the external procedure, the Decretal appears to be valid. For the Vicar Capitular did not proceed to the deprivation of the parish. Indeed, if one follows the alleged text of the Decretal in chapter "Concerning how accusations are to be judged," it cannot immediately be said that the Decretal is invalid, because, even if the prescribed form has not been strictly observed, it appears to have been observed equivalently, as happens in summary proceedings. For, as the witnesses testified, there was public defamation, indeed, denunciation, which, once established, requires the judge to inquire on his own initiative: the accusations of the accusers had been reported. Furthermore, the Archpriest knew that the retention of the suspected women in his service was the cause of the judgment; indeed, there was no opportunity for defense, due to the long period that elapsed between the warnings. All of these matters

Translated by churchlatin.ai, a product of Boyne Archives

were observed much more fully by the Archdiocesan Court before issuing the sentence confirming the Decretal. After these matters, considering the intrinsic merit of the case, both from serious indications and presumptions, and from explicit testimonies, it was shown that the Archpriest had lived shamefully and scandalously, especially with a third female servant who was a prostitute. With these and other matters presented, the purpose is to resolve the question: "Those who do not show repentance according to the nature of the offense and with perseverance, and who are not corrected by the Bishop with the penalty of imprisonment, suspension from the Order, and unworthiness to hold benefices, and in other ways according to the sacred canons, shall be punished..."

[*Latin ed. p. 451*]

Nullity of Decree 451: A Doubt. "Whether the opinion of the Metropolitan Curia should be confirmed or rejected in this case."

RESOLUTION. The Holy Congregation of the Council judged on May 11, 1872, that it should be confirmed, but with the provision that the sustenance [alimony] should be reserved from the date of removal.

FROM WHICH THE FOLLOWING MAY BE GATHERED:

I. In criminal cases against Clerics, proceedings must be conducted according to the dispositions of the Council of Trent and those sacred canons which, through those dispositions, have not been superseded.

II. Regarding Parish Priests living shamefully and scandalously, the Council of Trent specifically decreed in chapter 6, session 21, concerning Reform.

III. Such dispositions of the Council of Trent are to be understood in such a way that both Clerics holding Benefices and Parish Priests should be deprived of their Benefices or Parishes, when, after having unsuccessfully experienced other legal remedies or punishments, they have proven to be incorrigible.

IV. Therefore, if in a judgment, whether solemn or summary, any of these crimes were proven, and a Beneficiary were thereby deprived of his Benefice or Parish by sentence, there would be no deprivation; since, through this, the Beneficiary would not be shown to be incorrigible.

V. Conversely, if, after prior warnings and other legal remedies, the Beneficiary has not abandoned the suspected woman, or has not changed his wicked ways, a judgment for the deprivation of the Benefice would be difficult to successfully challenge, if the external formalities have not been observed; since, for this, a summary judgment is sufficient, that is, a method

Translated by churchlatin.ai, a product of Boyne Archives

of proceeding without ostentation.

[*Latin ed. p. 452*]

Nullitatis 452 decree and the form of judgment, preserving only the just law that nature itself dictates.

VI. Furthermore, you should understand that, in criminal cases, according to the ancient canons, the Ecclesiastical Judge could be moved to initiate a process in three ways: 1) by accusation; 2) by denunciation; 3) by inquiry.

VII. With the manner of opening a process by accusation falling into disuse, denunciation and inquiry have remained. These two methods of proceeding are often confused in practice and are reduced to one, namely, inquiry.

VIII. The Judge should not judge and, in a certain sense, anticipate the case based on mere clamor of a crime or on denunciations; but rather, both clamor and denunciations should be considered as just motives for opening a process, so that a judgment may then be rendered from the process.

1 2 3

1. See what I have written about summary judgments in Volume V, page 37, § Altera quaestio and following, and in general about the manner of initiating a process in Volume VI, page 121 and following.

The criminal process was formerly of two kinds: one ordinary, through the means of accusation, in which a legitimate accuser, after a dispute, presented evidence, and which was inscribed in the very accusatory document, stating that he would incur the penalty of *talio* if he failed to prove the crime of another. However, this inscription was subsequently removed, so that people would not be deterred by the fear of the penalty of *talio* from reporting crimes, and it was replaced by a sufficient guarantee, or a suitable caution, through faithful sureties or pledges, by which the accuser was warned to pursue the complaint until the end of the judgment, to pay expenses, and to repair damages, and was obligated to prove the crime according to the law. This method of proceeding, which was formerly the ordinary one, both in civil and canon law, has fallen into disuse.

The other method of proceeding was extraordinary, namely, the right of inquiry, in which the Judge, without prior accusation, investigates crimes and those who commit them, either by his own office, preceded only by a bad reputation, which is also called the noble office of the Judge, or in response to a denunciation by someone.

In modern times, this extraordinary method of inquiry has become ordinary: it is instituted either fully, observing every detail of the law, or summarily, simply by examining the truth of the matter, without the formalities and pomp of a judicial process.

3. I have noted this because I have often observed from the records that some ecclesiastical courts judge based on rumors and denunciations, with-

Translated by churchlatin.ai, a product of Boyne Archives

out any established process. This method of proceeding is not in conformity with the holy canons, which clearly prescribe (as in the attached chapter, "How to Proceed with Accusations") that such rumors or denunciations are just motives for initiating a process.

[*Latin ed. p. 453*]

Decree 453 IX concerning Nullity. In the matter of the Vicariate Capitular, all of these things were sufficiently observed, so that, due to the bad reputation of the parish priest concerning suspicious women, and from denunciations, the parish priest was first duly admonished; and, despite this, a summary process was instituted, and temporary penalties were imposed, as a first step to effectively correct the parish priest.

DOUBTS REGARDING THE FACULTY OF GRANTING DISPENSATIONS FROM MATRIMONIAL IMPEDIMENTS. June 28, 1873. Regarding the cause referred to in this section, page 2ÇO and following, since the doubt proposed to the Penitentiary Congregation remained unresolved, I omitted its synoptic discussion, intending to present it after the Sacred Congregation had examined the question again: which I now do. Since the Penitentiary Congregation has the faculty of granting dispensations in cases in which true poverty of the Orators is present, and is to be verified by authentic testimony from the Ordinary, in the occasion of doubts of this kind, which the Sicilian Bishops proposed in their case, the Sacred Congregation inquired whether another doubt should be discussed, namely, whether the dispensations granted by the Penitentiary Congregation are valid, with the aforementioned testimony of the poverty of the Orators given by the Ordinaries, when that poverty is falsely presented. I gather together what is written in both cases, as a matter of duty.

Synoptic Discussion. Therefore, as a matter of duty, the history of these dispensations, which are granted by the Penitentiary Congregation, is recalled. In previous centuries, all matrimonial dispensations, and therefore also those for the poor, were not granted in the external forum, that is to say, by summoning witnesses, by citing the accused to be heard and defended, so that the ecclesiastical judge could, according to what results from the process and the defense, judge according to law.

[*Latin ed. p. 454*]

454. Doubts arose concerning dispensations from marriage, which were granted only through the Apostolic Datary, and since the causes for which dispensations were granted were very limited, a dispensation for the poor was not granted except in cases of infamy affecting the woman, arising from a union, whether consummated or begun, or presumed, due to excessive familiarity and intimacy with a man. The Sacred Penitentiary had customarily dispensed only in cases of hidden impediments. With the collapse of

Translated by churchlatin.ai, a product of Boyne Archives

civil order in the late preceding century and the beginning of the present one, the functions of the Apostolic Datary fell silent, and all marriage dispensations were issued by the Sacred Penitentiary, with a special faculty granted to it. When things were restored to their legitimate state, all dispensations that pertain to external matters returned to the Datary. However, the Sacred Penitentiary retained the power to dispense in external matters only in the case where the poverty of the petitioners coincided with a scandalous cause. In more recent times, the practice has grown that each Major Penitentiary, when assuming the duties of his office, is granted by the Supreme Pontiff a special faculty to dispense in external matters in all cases in which the true poverty of the petitioners is proven by an authentic attestation from the Ordinaries. This faculty granted to the Sacred Penitentiary in favor of the poor can be called extraordinary, because it pertains to external matters and is not contained in the Constitution of Benedict XIV, which begins "Pastor bonus," in which the functions and attributes of the Sacred Penitentiary are defined, but is specifically conferred by the Supreme Pontiffs upon each Major Penitentiary. Considering these matters, it is now clear that the present controversy cannot be resolved by the principles with which the ancient authors debated concerning dispensations granted to the poor by the Apostolic Datary. For, since the causes for which the Apostolic Datary granted dispensations were limited, the formulas by which the dispensation was granted were also very precisely determined:

[*Latin ed. p. 455*]

Doubts concerning matrimonial dispensations 455, which formulas possess the force of law for each cause of dispensation, so that the authorities of that time have written volumes interpreting such formulas and determining the meaning of the words of each formula. Thus, they acted in the formula by which dispensation is granted to the poor, that is, the dispensation called the "dispensation for the poor," which was granted for a single scandalous reason, and Apostolic Letters are issued in the commissary form, by which a delegate is entrusted to grant the dispensation, after having ascertained that the conditions expressed in those same letters, or in the formula established, are true. The authorities who treated of such a dispensation, Rosa, De Justis, Corradus, Reiffenstuel, and other serious authors, admitted the validity of dispensations in the form for the poor, which had been granted to those who were not actually poor. For they maintained that the validity of a pontifical dispensation, according to common opinion, depends on the truth of the principal and final cause for which it was granted, and not on the truth of the secondary and motivating cause, for which the dispensation is indeed more easily granted, but would be granted even if it were not present. Reiffenst., lib. 4, Decret., de dispensat., super imped., § 8, n. 203 seq., and with him De Justis, Corradus, Rosa, and others. Indeed, at that time, the dispensation in the form for the poor was granted by the

Translated by churchlatin.ai, a product of Boyne Archives

Holy See only for the most serious cause of infamy, which would fall upon a woman because of intercourse, or suspicion of intercourse, or even because of the public scandal arising from it. De Justis, de dispens. matrim., loc. cit., 7, n. 2. Corradus, in Praxi dispens. Apost., I. 8, cap. 5, Reiffenstuel, loc. cit., § num. jóc, and others. De Justis adds that those are deceived who think that such a dispensation is granted for another reason. But everyone understands for themselves that this cause is much more serious than poverty, and therefore, even if poverty were absent, the Roman Pontiff would grant the dispensation because of it. Therefore, if poverty is lacking, it was rightly concluded that the dispensation is valid. This also seems to be the reason why the Sacred Congregation of the Council in the year 1679, on September 9, declared a certain dispensation to be valid.

[*Latin ed. p. 456*]

456. Doubts concerning matrimonial dispensations: A dispensation granted *in forma pauperum* [in the form of poverty], even if it is later discovered that the petitioners were not poor, *lib. jo, Decret., pag. 407*; for an incestuous union had intervened, which is the principal reason for the dispensation. Therefore, it is not surprising that after this resolution and after the common doctrine presented by St. Alphonsus, *op. moral, lib. 7, num. 112*; *Horn. Apóstol., tract. 18, num. 87 et qui eum sequuntur*; Gury; Scavini, etc., assert the validity of such dispensations, adding, however, with Corrado, that he who has been dispensed from marriage under a false pretense of poverty is bound to make amends and pay compensation. But the matter is different in the question we are discussing: we are not dealing with those particular dispensations called *in forma pauperum*; but rather with dispensations *for* the poor, which are now granted not only for scandalous reasons, but for any other canonical reason; therefore, the question seems to reduce itself to this: whether poverty is always a secondary and incidental cause, or whether it can also sometimes be a principal and final cause. No one will deny that there are several causes required for granting a dispensation, which, when compared with poverty, are certainly to be considered much more serious: but it cannot be denied that there are some which appear less serious in comparison with poverty; indeed, it can sometimes happen that poverty is so connected with certain causes that it becomes one thing with them. To illustrate the matter with examples, it is known that the narrowness of place is one of the canonical causes for granting a dispensation, which is often alleged. But, on the other hand, poverty cannot easily or usefully be alleged in the case of those who are bound by the narrowness of place. For the wealthy are forced to restrict their relationships to those within the place where they were born or where they live. Moreover, among the poor, the narrowness of place becomes even more pronounced, because they cannot form relationships with others, except with those who are engaged in the same profession,

Translated by churchlatin.ai, a product of Boyne Archives

and among whom they seek a life partner, so that, through joint labors in married life, they may more easily bear the burden of poverty. In such cases, if poverty is removed, the other cause alleged almost vanishes.

[*Latin ed. p. 457*]

Doubts concerning matrimonial dispensations 457. Much the same can be said of another cause, namely, the advanced age of the woman, having exceeded the age of twenty-four years. No one will deny that it frequently happens that honest girls, because of the poverty in which they labor, surpass that age unmarried. Afterwards, therefore, they are given in marriage, because they have found a husband who is similarly burdened by poverty. Here, too, one might ask, which is the stronger reason for granting a dispensation: the age, which perhaps would not be harmful to a wealthy girl, or the poverty, which was the cause for the woman to remain unmarried until that age? Again, the reason for a dispensation is that the woman is not endowed with a dowry. But if poverty is removed, the woman will be more endowed. Therefore, this reason is confounded with poverty. Another reason is the danger that the honor of young women may be shipwrecked because of poverty. This reason is neither infrequent nor improbable, and if poverty is removed, it would disappear. Therefore, since in the present practice concerning dispensations for the poor, it is either certain or at least very doubtful whether poverty is ever the primary cause, rather than a secondary one, it does not seem possible to define these dispensations as either valid or invalid by a general rule. Nor should it be said that the matter is to be resolved, as is the case with the faculty delegated to the Sicilian Bishops; for it is not the same faculty that is in question. Even if the faculty granted to the Major Penitentiary is restricted to the poor, nevertheless the Holy Penitentiary is the Tribunal of the Supreme Pontiff, and therefore whatever proceeds from that Tribunal seems to proceed from the Supreme Pontiff Himself. The Roman Pontiff uses the ministry of the Major Penitentiary. Therefore, this power to grant dispensations cannot be said to be delegated in the same sense in which it is said of the Bishops, who have a tribunal distinct from the tribunal of the Roman Pontiff. Furthermore, with the Major Penitentiary, the faculty to grant the aforementioned dispensations for poverty is granted, provided that there is authentic and true testimony from the Ordinaries confirming this; whenever such testimony is given, the Oratories are considered as truly...

[*Latin ed. p. 458*]

Question 458 concerning matrimonial dispensations: Whether the poor should be presented with such cases, and if, after a dispensation is granted, poverty is revealed to not exist, does the dispensation cease to be pontifical? Therefore, the entire question hinges on investigating whether the final cause expressed in the petition moved the Pontiff to grant the dispensation,

Translated by churchlatin.ai, a product of Boyne Archives

assuming poverty is absent. This cannot be determined except in particular cases. Indeed, the mind of the dispenser must be considered. For the Pontiff does not dispense through the Penitentiary. As is said concerning the Datary, that it is the organ of the mind and voice of the Pope, so too, according to Corradus in *Praxis dispensat., apost., lib. 2, cap. i, num. 36*, the same must be said of the Major Penitentiary in granting such dispensations. Therefore, since it is the mind of the Pontiff, and not the mind of the Penitentiary, that must be considered, the general rule applies, according to which a dispensation is valid when the principal and final cause are verified, and invalid if they are not. *THINGS WHICH HAVE BEEN DEEMED NULL AND VOID FOR THE GENERAL MILITARY.* Although the Holy Penitentiary is one of the tribunals of the Roman Pontiff, it remains true that the power granted to this tribunal to dispense in external matters is solely restricted to the truly poor; therefore, if the Holy Penitentiary grants a dispensation to the wealthy, the dispensation is always null, not only due to the lack of authority, but also due to the lack of will; for the Major Penitentiary is not considered to dispense unless it is within the limits of the granted authority; therefore, even if it were said, as is said concerning the Datary, that it is the organ of the mind and voice of the Pope, a dispensation given to true poor people cannot be said to have been granted outside of, and contrary to, his mind; and therefore, contrary to the mind of the Roman Pontiff. Furthermore, although, according to Corradus, as cited above, the Datary is the organ of the mind and voice of the Pope, the same author, in the same place, number 32, also wrote concerning the Datary that, through its channels, all graces pass, and that it carefully considers whether a grace should be granted or denied: for although the Pope grants a grace, and it is not the Datary (as decided in *Rotam, dec. 438, num. 3, p. 3 div er.*), nevertheless, His Holiness is often moved, according to his intention, to grant or deny those graces.

[*Latin ed. p. 459*]

Doubts concerning matrimonial dispensations 459. If these matters are transferred to the Major Penitentiary, since the intention of the Penitentiary cannot be considered different from the limits of the granted faculty, the pontifical dispensation will only be able to be applied to the poor. Therefore, those who allege poverty, and are not truly poor, will not receive any dispensation whatsoever. Finally, since reason, which is the best interpreter of faculties, is the means by which they are usually applied, it seems that the practice of the Holy Penitentiary indicates that it can be applied in the same way. Three periods must be distinguished: the period preceding the dispensation; the period between the dispensation and its execution; and finally, the period that follows the dispensation, which has already been requested for execution. If we are speaking of the first period, when the dispensation has not yet been granted, then the practice of the Holy

Translated by churchlatin.ai, a product of Boyne Archives

Penitentiary is that if it is certainly discovered that the petitioners are not truly poor, their petition is referred to the Apostolic Datary; but if there is only doubt about the true poverty of the petitioners, then either clearer declarations are sought from the Ordinary, or, if the marriage is imminent and there is danger in the delay, the dispensation is granted, but with the express condition that the petitioners are truly poor. If we are speaking of the second period, then the Holy Penitentiary either refers the petitioners to the Apostolic Datary, or, if the circumstances suggest that something else should be done, it grants a new dispensation, invoking special faculties obtained from the Holy See; however, in granting this new dispensation, it never uses those faculties which allow it to dispense with the poor. Finally, if we are speaking of the third period, then the tribunal of the Holy Penitentiary grants a remedy, not by its own faculties, but by referring the matter to the Holy See in each individual case. From this practice, it appears that the Holy Penitentiary interprets this faculty in such a way that it is limited to the truly poor, so that...

[*Latin ed. p. 460*]

Question 469 concerning matrimonial dispensations: If something other than what is prescribed is done, is the dispensation not only illicit, but also invalid, when either another dispensation or a remedy is granted? It cannot be adduced as an example, as some eminent authors have judged, concerning dispensations granted by the Apostolic Datary in the form of poverty: for in these dispensations, the question is rather about the form in which those dispensations are issued, that is, whether the words with which that formula is concluded, while the individuals are truly poor and wretched, affect the substance of the formula contained in the Apostolic letters, or rather, whether these words refer only to the tax or contribution to be paid to the Apostolic Datary. Conversely, in the matter at hand, the question is not about the form, but about the faculty. These things, which are written by way of explanation in both propositions, have been arranged in a single order, although they may only serve to aid understanding. For the Holy Congregation of the Council judged that the general question should not be defined, but only approved the practice observed in the Holy Penitentiary, by means of a response to the following question. Question: "Are matrimonial dispensations valid, granted by the Holy Penitentiary in the external forum, for the poor, when poverty has been falsely alleged in the case?" However, such a conclusion, made in the course of discussion, is not, upon careful consideration, correct. For it presupposes this universal proposition: all matters which are presented to the Roman Pontiff to be validated and remedied, are presented with the persuasion, and are remedied by the Roman Pontiff with the persuasion, that they are certainly substantially null. This proposition, when considered universally, is false. For many things are presented to the Roman Pontiff to be remedied, so that

Translated by churchlatin.ai, a product of Boyne Archives

they may be corrected and made safe, and thus not open to anxieties and questions. This happens very clearly in the matter at hand. Compare also what I wrote in Volume V, page 27, in a note about Apostolic letters, which are issued by the Datary in the form of "Perinde" (in the same manner). Indeed, even through such letters, the Roman Pontiff remedies defects that have occurred in dispensations, but it cannot always be concluded that the dispensations were affected by a defect to the extent that they were null.

[*Latin ed. p. 461*]

Doubts concerning matrimonial dispensations 461. RESPONSE. The Most Holy Congregation of the Council, having again examined the matter in deliberations held on June 28, 1873, judged that nothing should be changed. From which the following may be gathered: I. The ordinary tribunal for granting matrimonial dispensations in the external forum is solely the Apostolic Datary; the Sacred Penitentiary, however, in granting these dispensations in the external forum, is an extraordinary tribunal with limited powers for the benefit of the poor. II. Nevertheless, both tribunals, being those of the Roman Pontiff, carry out, in name, mind, and voice of the Roman Pontiff, the matters which they handle, or are judged to handle. III. Therefore, not everything that is disputed or affirmed concerning the power delegated to Bishops in such dispensations, can be said in the same way concerning dispensations granted by the Apostolic Datary or the Sacred Penitentiary. IV. For Bishops exercise a truly delegated power, and have their own tribunal, from which an appeal is granted to the tribunals of the Roman Pontiff; whereas, an appeal is granted from the Delegate to the Delegating authority. Conversely, the Datary and the Penitentiary are assistants of the Roman Pontiff in the ministry of supreme power over the entire Church. V. Therefore, if the distribution of powers among the tribunals of the Roman Pontiff is different, it is not for any other reason than that the domestic order may be preserved in this ministry of the Roman Pontiff. VI. It can never be presumed that this order is not observed by the tribunals of the Roman Pontiff, although perhaps they may have broadened their hand in the administration of powers; therefore, it can never be presumed that the powers granted by the tribunals are null. VII. Therefore, the entire question arises from the part of the orators or petitioners, who are able to extort a dispensation through trickery or deception, either in good faith or bad faith.

[*Latin ed. p. 462*]

462. Doubts concerning matrimonial dispensations. VIII. Any deceit or fraud committed by the parties should not be presumed, but must be clearly demonstrated. IX. Once deceit or fraud has been proven, or is admitted without dispute, the rules commonly taught by canonists, derived from law, apply to determine whether a dispensation granted

Translated by churchlatin.ai, a product of Boyne Archives

by the Roman Pontiff, or an Apostolic Letter granting the dispensation, is valid or not. X. Such questions cannot be defined by a single, general answer, since, depending on the diversity of circumstances, different rules of law apply, which may lead to either an affirmative or a negative judgment. XI. In the matter itself, considered in a general way, it does not seem easy to judge the nullity of dispensations, since, on the part of the grantor, the validity of the dispensation is always presumed; on the part of the petitioners, there must be certain and substantial deceit and fraud; which is all the more difficult to admit, the more difficult it is to determine with certainty who are the poor, and who are not.

DISPENSATION FROM CHORAL SERVICE. June 22, 1872. Summary of petitions. A priest from the town of N, a member of the collegiate church of Mansion, humbly petitioned the Holy See for a grant of leave, both because of his forty years of service in the choir, and because of the incurable illness from which he suffered. A medical doctor testified that the petitioner was "afflicted with chronic arthritis in the lower extremities, to such an extent that he could scarcely walk, and needed a cane even in his own home; that if he were to put down the cane, he would falter, and could only stand for a short time." Asked about the matter, the Bishop reported that the Chapter, after examining the records, testified that there was no evidence of the petitioner's continuous and commendable service in the choir, and...

[*Latin ed. p. 463*]

The dispensation from the service of the choir, therefore, must be rejected according to the same decree. Indeed, it was established that from the year 1827 to 1830, the choir had been legitimately exempted from service by reason of an indulgence; from the year 1831 to 1871, it had accumulated 27,397 points for diligence and 21,105 points for negligence. However, when the aforementioned petitioner himself, according to the Bishop's report, admitted that the choir's service had not been continuous and praiseworthy, but insisted on the cause of his illness, the Bishop again consulted the Chapter regarding this matter, and the Chapter issued a vote contrary to the petitioner's request, for the following reasons: 1. that the infirmity was not connected with the praiseworthy service, and that the indulgence would prejudice the collegiate church due to the reduced number of canons; 2. that the infirmity was not of such a nature as to render the petitioner unfit for choir attendance, especially since the petitioner traveled in the town of N. and in neighboring cities to conduct his business, and on holidays he went to the rural church to celebrate Mass. If the infirmity rendered him unfit to fulfill his choral obligations, he could be represented by another; but he could not, by an indulgence, be perpetually excused. However, the petitioner maintained that the infirmity was incurable and rendered him unfit for choir attendance, and even more so for the conventual Mass and other choral obligations,

Translated by churchlatin.ai, a product of Boyne Archives

because without the aid of a crutch, he could not stand at all. He proved this by the testimony of a physician. He stated that, if he were forced to travel to conduct his business, he could always perform this task with the aid of a crutch, which he never abandoned, even when compelled by necessity to celebrate Mass in the rural church, so that the rural people would not lack Mass on holidays, which were celebrated in his private chapel on weekdays, according to the indulgence he had obtained. With these reasons, he concluded that he should not be represented by another canon, but should be completely excused on account of his infirmity. However, the Bishop, while not granting the indulgence for the sake of joy, since he had been negligent in the choir, did believe that an indulgence should be granted on the grounds of infirmity, especially because it would cause astonishment if the petitioner, supported by a crutch, were to sing Mass or perform the duties of a minister.

[*Latin ed. p. 464*]

Regarding dispensation from choral service: A rescript was issued concerning "the Indult of Jubilation," which was presented. However, concerning dispensation due to infirmity, letters were sent to the Ordinary, so that, after hearing the matter, he might report whether the customary practice in similar cases was observed, whether any particular statutes of the Chapter applied to the matter, and whether the petitioner was endowed with an Apostolic Indult, so that he might be able to celebrate Mass with the aid of a cane. Therefore, the Chapter sent a portion from its capitular constitutions, which reads as follows: "In the book of regulations, it should be noted that those who, although absent from the choir, are nevertheless considered 'present' by fiction, and who participate in the distributions, and are: 'those whom infirmity or a just and reasonable bodily necessity, or evident benefit to the Church, excuses. For the Church, like a pious mother, considers present and allows to participate in the distributions of her benefices those who are absent due to a true and real infirmity, or a just and reasonable bodily necessity, if they had previously been accustomed to serve the Church when they were healthy; those who, having been dismissed, have neglected to perform their office' (Sacred Congregation of Rites, February 6, 1627, and March 5, 1667). Furthermore, the Chapter added that, according to a firmly established custom, a gravely ill person had never been penalized or represented by another, regardless of whether, previously, he had been diligent or negligent in the choir; but that each person is obligated to attend Mass and the Divine Office as soon as he is able to celebrate. Regarding the third question, the Bishop stated that the petitioner was not endowed with an Indult that would allow him to celebrate Mass with a cane; he added, however: "But, upon receiving more accurate information on this matter, it is clear that the petitioner may celebrate Mass either alone, or in his private chapel, or in a small rural church, in which there is an altar."

Translated by churchlatin.ai, a product of Boyne Archives

What is meant by such a response, "Relatum," I have explained elsewhere, that is, that the petitions were presented, but had no favorable effect. The same meaning is conveyed by the word "Lectum," that is, that the petitions were read and considered in the Sacred Congregation, but received a negative response.

[*Latin ed. p. 465*]

465. A dispensation from the service of the choir is granted through a single, minor degree, and not far from the same altar. The priest puts on the sacred vestments. In both of these places, the celebrant leaves his staff while putting on the sacred vestments, and, clothed in these vestments, he leans on the arm of the attendant while proceeding to the altar or returning from it. Furthermore, during the actions of the Mass, when he must move, he leans on the altar itself. After such matters have been explained, observations customary according to the office have been written down, explaining what is required by law for the celebrant, and what is beneficial. These matters, if you wish, can be clarified either from other cases of this kind, or specifically from a similar case explained on page 215 and following. Therefore, after the expenses and prayers presented to the Sacred Congregation of the Council on June 22, 1872, a Rescript was issued: Regarding the attendance at the altar by the choir, and processions, absences do not, in themselves, constitute grounds for denial; rather, they are grounds for being held to the service.

SUMMARY:

I. Although a Chapter canon, who has faithfully and continuously fulfilled his choral duties for forty years, is granted a Jubilee Indult by reason of equity, such a reward should not be given to one who has been negligent in the choir.

II. Indeed, an Indult should not be granted due to infirmity: for, guided by justice or equity, it cannot be considered that one who is healthy and able, but frequently refuses to be present at the choir, is thereby excused from his duties.

III. Especially if the infirmity is of such a nature that, although chronic, it does not entirely prevent the sick person from attending the choir.

IV. In the case where both Indults are denied, the Chapter canon, unless a custom stipulates otherwise, is not bound to those sacred functions for which he has become incapacitated, such as service at the altar and processions, in which he could not, without causing offense to the people or disgrace to the function, participate, even if an Indult were granted. Ada, vol. VII, sect. LXXIX, 30.

[*Latin ed. p. 466*]

466. Extension of the Decree: EXTENSION OF THE DECREE. August 17, 1872. Summary of the stipulations. In the noble maritime town of the

Translated by churchlatin.ai, a product of Boyne Archives

diocese of JV, under the spiritual care of the Archpriest Abbot, a chaplaincy was established in the year 1763 by the Archpriest himself, using his own property, in the parish church, at the altar of the Most Holy Rosary. The founder stipulated, "that the chaplain should celebrate Mass each day on the prescribed feast days at said altar, and should, each time, recite one-third of the Rosary, and should apply everything according to the intention of the aforementioned founder, with the added obligation of singing Mass each year on the anniversary of the founder's death, also with the recitation of the Most Holy Rosary, and with the obligation of paying the expenses of the singers." He desired that such a chaplaincy should be a residential benefice, and he provided a suitable house and land; he also desired that the chaplain should personally fulfill the duties, "and if, for a just and legitimate reason, he were hindered, the substitute priest should receive no more than an alms of 24 gazzettae." Furthermore, he desired that "such a chaplaincy should not be joined to any care of souls or parish, or to any other benefice; the chaplain, for the time being, should assist the Archpriest of the town, and should assume the office of chaplain of the aforementioned Abbot Archpriest, provided that he fulfilled the duties of the chaplaincy." He desired that the selection of the chaplain should be made by the Abbot in office, and he urged him to choose a chaplain from the best priests of the same community; if there were none available, he should choose from the wider university. He entrusted the administration of the goods to the aforementioned chaplain, but with the stipulation that each year he should pay ten Roman scudi.

[*Latin ed. p. 467*]

The extension of the decree [467] would yield better results for the properties. Indeed, if any dispute should arise concerning the properties, the chaplain could contribute all the revenues of the chaplaincy to the legal proceedings, and, meanwhile, suspend the celebration of Mass on holy days of obligation: and this in order that the properties might be preserved perpetually. He established certain executors of this intention, who, if they were unable or refused to act at a given time, were to remit the entire matter to be carried out by the chaplain himself. But such chaplaincies underwent such vicissitudes that, successively, the ordinaries, when consulted as the situation required, or through negligence, or for other reasons, were completely unaware of what to report to the Holy Congregation: there were contradictions in the documents, ignorance of the facts, and doubts in matters that did not admit of doubt. Due to this deficiency, it appears that, from the year 1810, the assets of the chaplaincies were administered by testamentary executors, who, finally neglecting matters, failing to fulfill the obligation of the Masses, and burdened with debts, abandoned the entire matter. In the year 1862, the Bishop requested from the Most Holy Father that he himself, the Archpriest, administer the benefice for five years, with

Translated by churchlatin.ai, a product of Boyne Archives

all the honors and obligations of the chaplain, but in such a way that he could celebrate the prescribed Mass with the Rosary on the vigils of holy days; and these obligations would be reduced in order that the debt could be paid. The requests were granted with a favorable decree; indeed, in the year 1867, they were renewed for another five years. As the term of this five-year period approached, the same Archpriest sought the solution of certain doubts from the Holy Congregation, indicating that the holy days of obligation in that nation had been reduced to eighty-six per year; he asked: whether the chaplain of the same benefice was still obliged to celebrate so many Masses, after reciting one-third of the Rosary, as long as there were eighty-six holy days of obligation, as the founder had stipulated; or whether he could enjoy the benefit of the reduction and, together with the recitation of the Rosary, omit the celebration of Mass on holy days. Also, whether, if the chaplain is legitimately impeded, he fulfills the obligation by...

[*Latin ed. p. 468*]

Regarding the extension of the decree, another matter arises: whether one is obligated to fulfill only the Mass, or also the recitation of the Rosary. In this matter, which admits of an easy solution, there are certain observations to be made, which you may recall, if you wish, from a similar case discussed in the Sacred Congregation of Bishops and Regular Canons, as you have it explained on page 268 and following, although the response was different due to a different law and the testator's intent.

DECREE. Therefore, after deliberation and prayer in the Sacred Congregation of the Council on August 17, 1872, the following decree was issued: The chaplain or substitute is to be held obligated to celebrate Mass and to recite one-third of the Rosary on feast days, even if those days are suppressed. However, regarding the extension of the decree, the answer is negative; and the bishop is to receive from the archpriest a decennial report of the administration, and to proceed as soon as possible to the appointment of a new chaplain.

FROM WHICH YOU MAY GATHER:

I. That pious foundations of testators are to be most carefully observed; and that the dispositions of those foundations are to be considered in the Catholic Church as supreme laws, by which no one else can derogate, except the Supreme Pontiff.

II. That bishops are born executors of pious intentions, upon whom not only a right, but also a duty, rests to ensure that these pious intentions are not neglected, even if the testators may not have made mention of the bishop's vigilance.

III. That, once a disposition has been made by the testator, that Masses

Translated by churchlatin.ai, a product of Boyne Archives

and whatever else is to be celebrated on feast days by order, the chaplain cannot be released from this obligation on those feast days that are subsequently suppressed.

IV. Although such dispositions of pious intentions cannot be confused with Church law (which desires all sacred functions to be performed on feast days, even if those days are suppressed);

[*Latin ed. p. 469*]

4b9. Nevertheless, the matter of the extension of the decree is not such that the intention of the Church in suppressing certain feast days is to defraud pious founders of the benefits intended by their wills.

1. DISPENSATION FROM IRREGULARITY. August 17, 1872. Summary of petitions. It is necessary to recall the case that I have explained on page 2ÇÇ, in which the response was, as stated, that it was not advisable. The unfortunate priest, deeply affected by the bitterness and pain of this response, again petitioned the Most Holy Father for a dispensation from the irregularity, especially because of the miserable condition in which he claimed to be, so that further affliction would not be added to his suffering. The Bishop, also commending the petitioner, earnestly implored that his requests be granted, saying: "I send this letter to Your Holiness with great sorrow of heart. It concerns that priest, Barnaba (J.V.), who long ago approached Your Beatitude seeking grace for rehabilitation to celebrate the holy Sacrifice of the Mass, despite the complete defect of his right hand, but with the assistance of his left hand, which has been repaired.

1. Note the difference in the law of the foundation in the aforementioned case on page 289, and you will understand the difference in the response. In that case, the response was that the chaplain was not obligated to celebrate Mass in the church designated by the testator on feast days that were suppressed, and was therefore free to celebrate that Mass elsewhere. For the testator had stipulated that the obligation to celebrate in that altar applied only on feast days by precept. Therefore, after the Apostolic See subsequently suppressed certain feast days, the chaplain was, in accordance with the will of the testator, freed from the obligation to celebrate Mass in the designated church and altar on those days that were no longer by precept. He was, however, still obligated to celebrate Mass elsewhere, in accordance with the intention of the same testator.

[*Latin ed. p. 470*]

470. Regarding a dispensation from irregularity: "To the Sacred Congregation, which undertook to examine and decide this matter, it seemed not to grant the aforementioned rehabilitation. However, the poor priest cries out after us, so that he might finally be allowed to celebrate Mass. Nevertheless, I did not wish to direct this letter to Your Holiness until the priest Barnaba, master of ceremonies of this cathedral of this holy church,

Translated by churchlatin.ai, a product of Boyne Archives

was again subjected to examination. He reports that this priest performs the ceremonies of Mass with an artificial hand and without it; but with this difference, that he performs all the sacred actions more quickly and perfectly with the help of the artificial hand than without it. He particularly points out the difficulties of breaking the Host and of holding the fragments in the paten with the left hand, while striking his breast with the right hand, saying three times, "Lord, I am not worthy." All of this is done quickly, naturally, without prolonged delay, using the artificial left hand. Without this hand, the breaking of the Host cannot be done over the chalice, but it can be done in the paten, with the fragments of the left hand being supported. Hence, the same master is of the opinion that, if this priest is to be rehabilitated, it is better that he celebrate Mass with an artificial hand than that he perform the sacred actions without the left hand. He proposes, however, that he should not use the artificial hand except for celebrating, and that, after the celebration, he should keep it safely under guard. These are the things that I have considered necessary to present to Your Holiness and the Sacred Congregation, adding my humble supplications that this matter be again considered in the Congregation, and that provision be made for a solution. For it is not a question of promoting someone to the priesthood, but of a priest who has already been promoted, and who, through the loss of his left hand, may otherwise be of assistance to his parish priest in the city (A.), in whose church of the Holy Sepulchre, under the jurisdiction of the Order of St. John of Jerusalem, there is no other priest present, except the parish priest, although there are many other parishes in that city with their own clergy."

[*Latin ed. p. 471*]

Dispensation from Irregularity 471. Given the circumstances, it is necessary to note that a recent example of a dispensation granted in a similar case, concerning De Linares, exists. A dispensation was granted from irregularity, dated July 8, 1865, in which the response was: "Provided that the [sacrament] be celebrated in a private oratory with the presence of another priest or deacon, for the sake of the dispensation and habilitation for a time at the discretion of the Bishop, with the proper words spoken with the Most Holy [Sacrament]."

Furthermore, after deliberations and prayers held in the meetings of the Most Holy Congregation of the Council on August 17, 1872, it was decided to respond: "Application must be made to the Most Holy [authority] for the grace of a dispensation from irregularity, at the discretion and conscience of the Bishop; and in accordance with the mind of the Most Holy Congregation, the Bishop should consult, lest any danger of irreverence arise towards the most august Sacrament; specifically, that two small globules, adhering to the index and thumb fingers, be made of gilded metal, with the other precautions that the Bishop himself proposes. As for the

Translated by churchlatin.ai, a product of Boyne Archives

sacrament of ordination, which was not properly performed (about which the initial prayers concern), if consultation has not yet been sought, consultation should be sought according to the Bull of the Most Holy Pope Benedict XIV, *Impositi Nobis*, of the year 1746.

From the foregoing, the following can be gathered:

I. If the prayers, through the Rescript of the Most Holy Congregation, have been rejected with the words: "as is explained, it does not seem expedient," the grace is indeed denied, but not absolutely denied, so that the hope of obtaining the grace should never be completely abandoned.

II. However, in order to obtain the grace, it is necessary that the prayers not only be reformed externally, which would be of little or no effect; but that they contain sufficient motives, which, according to the sacred canons, are capable of moving the Pontiff to grant the grace.

What such a clause, "at the discretion and conscience of the Bishop," signifies, I have sufficiently indicated in Volume III, page 524, in a note.

[*Latin ed. p. 472*]

472. Dispensation from Irregularity III. In this matter, with new petitions presented, in which the danger of irreverence was demonstrated, and the evident utility indicated to the Church to which the petitioner was attached, and with the cause of compassion added, sufficient motives intervened so that, now that he had been promoted to the Priesthood, a dispensation might be granted. FROM THE HOLY CONGREGATION OF RITES OF ROMA. Concerning the image of the Divine Infant to be venerated during the Nativity season. DOUBTS. On February 14, 1873. "Since the present Prefect of the Ceremonies of the Apostolic See, in his work, entitled *Manual of Sacred Ceremonies*, book II, chapter XIV, § y, page 32, having set aside various opinions, has proposed that the image of the Divine Infant, placed above the altar during the Nativity season, should be incensed three times, and since some people accuse this custom of error, in order to eliminate, above all, the variations that cannot continue without some admiration of the faithful, this Holy Congregation has humbly petitioned that it would define what is to be done in this case. Therefore, the following doubt was proposed: "Is the sacred image of the Divine Infant, placed in the principal place above the altar during the Nativity season, to be incensed three times, in exactly the same manner in which the Cross with the image of the Crucified is incensed?" "The same Holy Congregation, having heard the report made by the undersigned Secretary, and also the opinion of the Reverend Lawrence Salvati,

[*Latin ed. p. 473*]

After mature and careful consideration, the Auxiliary of the Promoter of Holy Faith decided that a response should be written: Affirmative. And thus, a response was written, and it was ordered that it be observed ev-

Translated by churchlatin.ai, a product of Boyne Archives

erywhere. February 15, 1873. Cardinal PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. ”S. D. Bartolini, Secretary of the Sacred Congregation. NEAPLES OR PINNE. Concerning the beatification and canonization of the Venerable Servant of God, Nuntius Sulpritii, a young man from the diocese of Penne. Again, this blessed cause of a young man is presented to our readers, whose progress and outcome they will certainly desire, those who work to educate young people piously and Christianly; I mean those young people, who, being in the lowest condition of civil society, find it difficult to find those who will properly cultivate their Christian upbringing. In Rome, there are Roman priests, even those distinguished by ecclesiastical dignity, who, by the example of heroic virtue, find joy in instructing the poorest young men, addicted to servile trades, in Christian knowledge, suitable to their condition, and spend a great part of their lives in this free work of charity; for whose reward, and indeed a very abundant one, they expect nothing but from Him who said, ”I was a stranger, and you took me in... whatever you did for one of these least brethren of mine, you did for me.” His Holiness preceded them, who, by a most noble example, was entirely devoted to such works of charity when he was younger, and who is now still greatly delighted by the presence of these little ones, and with his own hands, on the day when the entire world was moved by divine grace (see Vol. IV, page 510), on the occasion of the fiftieth anniversary of when he first received Holy Orders, on that very day, during the celebration of Mass, with an immense Christian people present, he refreshed with the most holy communion the hand of one of these young men, in memory of the first Holy Communion that he celebrated among young people of the same condition. And these works of charity are constantly encouraged, fostered, promoted, and protected.

[*Latin ed. p. 474*]

Neapolitana 474, or Pinnen. This cause, concerning a most poor young man, involves considerable expenses, which the lengthy procedures of this cause necessarily require; and, as I have said elsewhere, it progresses through the offerings of the faithful, which thus far have been sufficient to bring the cause to the stage which I am about to describe. Therefore, after the introduction of the cause has been admitted among the acts of the Apostolic See, and after the process has been completed with only episcopal authority, with this introduction approved by the Roman Pontiff, the Servus Dei is already called Venerable, and is presented to the entire Church as Venerable; the Holy See takes up the entire cause, and, at the urging of the Postulator of the same cause, begins to examine it. It is, indeed, through its letters, which are called remissorial letters, that certain processes are sent, first concerning the lack of cult, so that it may be ascertained that the decrees of Urban VIII have been observed, which prohibit anyone from being publicly and ecclesiastically venerated

Translated by churchlatin.ai, a product of Boyne Archives

as Blessed or Saint, before the Holy See pronounces judgment. Also, other processes are sent concerning the writings of the same Venerable Servant of God, so that nothing may arise in the progress of the cause that would be an impediment, so that it may proceed. These matters concerning the Venerable have been completed. Now, at the urging of the Postulator of the cause, new remissorial letters are to be sent to examine the Apostolic [process].

On this occasion, we again invite our readers to contribute in some way, through some monetary offering, to promote the cause of this Venerable young man. For I have heard from those who, with zeal for charity, are promoting such a cause in Rome, that new and remarkable arguments are not lacking, especially graces and miracles worked through the Venerable Servant of God, so that the cause may proceed with the speed with which it has reached the present stage, if there were new offerings from the faithful to advance the proceedings. Those who wish to contribute their help to this cause should write a letter addressed as follows: To the Reverend Father John Canon Ponzi, at the Noble College of Capranica, Rome. For it is through him, who collects the offerings for this cause, that one can obtain information, the life, images of the Venerable Servant of God, and relics. Or, they can also write letters to the Postulator of the cause, the Reverend Father Joseph Canon Coselli, at the same Capranica College. We explained the introduction of the cause in Volume V, pages 487 and following, and there we added the decree concerning the lack of cult; and you will find another decree concerning the writings in Volume VI, pages 366 and following.

[*Latin ed. p. 475*]

Neapolitan or Pinnen. 475. Regarding the reputation for sanctity of the aforementioned Venerable Servant of God, and having obtained this from the Most Holy Lord, and having appointed persons to conduct the process in Naples according to the prescribed norms expressed in the aforementioned instructions, and having summoned him to appear and contradict, etc. The Promoter of the Faith; the process in Naples was completed, and it was transmitted to Rome in authentic form. Thereupon, a discussion ensued regarding two points, according to such judicial procedure, namely, whether it can be established that the process was validly conducted by Apostolic authority, and whether the reputation for sanctity in the general sense of life, virtues, and miracles can be established from the process. The aforementioned Advocate, who undertook to hear this cause in Rome, most firmly demonstrated in writings, which are called the "Information." We are compelled to abstain from even a synopsis of this Information regarding both points, since our entire collection would be absorbed thereby; all the more so, because regarding the part that pertains to relevance, our readers may recall what we have already learned from the ordinary process in

Translated by churchlatin.ai, a product of Boyne Archives

volume V, pages 487 and following, from which we also outlined the life of the Venerable Servant of God. For what we explained there does not differ from what was presented in this Apostolic process; indeed, almost everything agrees perfectly. Rather, I will present some of the difficulties raised by the Promoter of the Faith, along with the responses from the Advocate of the cause, which I do in the following discussion. Synopsis of the discussion. OBSERVATIONS OF THE PROMOTER OF THE FAITH. Among other things, the Promoter of the Faith raised these two points, which seem to us to be the most important, in opposition: first, the validity of the Apostolic process, which is of the highest relevance. Regarding the validity of the process, he noted: "In the collection of 'witnesses,' the first to appear is that very priest, Anthony Radente, who in both the ordinary and Apostolic inquiries, the Postulator..."

[*Latin ed. p. 476*]

476 Naples, or Pinnen. "Neither had he held office, as he himself most candidly stated: previously, he had held the office of Postulator in the ordinary process and in the process concerning unfulfilled duties. The second witness, Reverend Father Paul Laudati, stated of himself: in the investigative process (established by ordinary authority), I held the office of Notary. Furthermore, this accumulation of offices conflicted with the Decree issued during the examination of these matters, by which the Sacred Congregation of Rites judged that, if it pleased the Most Holy Father, it should no longer be permissible for the same person to hold different offices, not even successively, in any processes, whether ordinary or Apostolic, pertaining to the cause of the same Servant of God, under pain of nullity. On December 10, 1870. This Decree was ratified by the Most Holy Father on the 22nd day of the same month and year. 1. Moreover, even before such a Decree, it had been determined that the Postulator, especially, should not be heard as a witness, even after being dismissed from office: as our own jurist rightly observes (Benedict XIV in his work *De Canonis*, 1. 3, c. 6, n. 10): "The testimony of the Postulator and Procurator, as long as they remain in office, does not seem to be admissible; and to the extent that, after being dismissed from office, they are subjected to examination, if other requirements are present, their statements will not have the force of proof, but can obtain at most the value of pure auxiliary evidence, according to what is added by Farinacci, etc." Therefore, it is necessary either to entirely disregard the testimony of these two individuals, or to consider it as pure and simple auxiliary evidence. Regarding the relevance of this observation concerning the aforementioned process, the Promoter of the Faith, suspecting the cause of this defect, proceeded as follows: "When I inquired of our most learned jurists, why the Neapolitan Judges, who had previously demonstrated such competence, should come to this point, that they would admit the Postulator and Notary in court, the most plausible explanation that occurred to me

Translated by churchlatin.ai, a product of Boyne Archives

was that they had found no other suitable witnesses who..." This Decree is found in Vol. VI, page 348.

[*Latin ed. p. 477*]

In Naples, or Pigneno. "The fame of the sanctity of V. D. S. could have been discussed." Then it is truly understood why the structure of this summary consists primarily of these two statements. If the veracity of these is examined, from the reasons presented, their authority is not complete. Furthermore, those who gave testimony in the same process will express themselves, for the most part, with generic and sufficiently concise expressions. All of these, if considered together, will lead one to the judgment that the fame of the sanctity and virtues of this Venerable young man was not as great in Naples as it is necessary to suggest, albeit with more elegant phrasing, in this Information.

Especially if one considers the causes, which are called probable, that brought about this fame, one might rightly attribute some affection to them. For all the witnesses, in what they recounted, primarily designate the knight Felix Wochinger, formerly a most pious leader of the Neapolitan militia, who received the Venerable young man into his home as a guest, and treated him as a most beloved son. Since others are often composed according to the example of a leader, what is to be wondered at if the soldiers under the command of V. D. S. also considered him a delight, and perhaps even as a saint?

E.A. TO WHICH THE ACCUSER REPLIED. The Accuser, or the author of the Information, responded to the first objection: "Indeed; let their testimony be excluded; and what follows from this? Does it not follow that the depositions of the eight witnesses were, by themselves, not sufficient to provide full proof in our case?"

However, the Accuser did not concede that the examination of either of the two other witnesses had been rendered invalid. And he noted, first of all, that in the entire Information, many of the most splendid things that had been said about the fame of V. S. D. had never been confirmed by the words of the first witness, whose testimony, therefore, was included in the tables of the Summary along with the others, because at least it could serve as a support for the proof. And with regard to the Decree of the year 1870, which under penalty of nullity prohibited that the same person hold different offices, or successively hold offices that...

[*Latin ed. p. 478*]

478 In Naples, or Pinnen, it was argued that the decree might be applicable. In response, it was stated that, if no other means were available to alleviate the difficulty, it could be inquired whether the meaning of the decree had been definitively determined. Specifically, whether offices designated by different titles should also be understood to include those

Translated by churchlatin.ai, a product of Boyne Archives

offices that are not mutually opposed. If these offices are not understood to be included, as appears to be the case according to the meaning of the decree, then the decree would scarcely affect the witness who had performed the duties of a Notary in the ordinary process. And it was argued that the doctrine of Benedict XIV, concerning the Notary in question, was unjustly applied, since it excludes only the testimony of the Postulator, Advocate, and Procurator; but not that of the Notary. Moreover, it was asserted that the second witness, or Notary, had consistently presented a reason for his testimony that was entirely different from what the duties of a Notary might suggest. But to eliminate all doubt regarding the validity of the proceedings, it was firmly stated that the decree of the Holy Congregation had been communicated to the Most Reverend Archbishop of Naples, when the aforementioned two witnesses had already undergone examination; therefore, the proceedings had not been subjected to the sanction of that decree. Thus, the Advocate refuted another objection raised concerning the relevance of the matter, as if the judges of Naples had admitted these two witnesses because they could not find any others who were suitable; it was shown that suitable witnesses were not lacking, since ten witnesses had undergone examination in that inquiry, whereas such inquiries are usually concluded with six, or at most eight, witnesses. It is sufficient to examine the records in the Summary to convince oneself that the proceedings consist not of the statements of two witnesses, but of the entire text of the proceedings. Even if it were granted that the remaining witnesses had expressed themselves in general terms, what would follow from that? Would it be sufficient to prove a general inquiry with general terms? But here, the question concerned not virtues in a specific case, but only reputation in a general sense. However, after the witnesses had been indicated, the Advocate completely denied that the situation was as the Promoter had asserted, since everything consisted of the testimonies of the witnesses.

[*Latin ed. p. 479*]

Neapolitan or Pinnen. 479 In response to the objection raised by the Censor, based on affection, the Orator stated that such difficulties are almost always fruitless, and therefore entirely inappropriate to raise in this matter. Let us inquire as to the reason why the knight Wochinger, a young man previously unknown, already ill, and abandoned by all, whom he had previously placed in a hospital for incurable patients, later took him into his home as a most beloved son; let us inquire as to the cause of these events; and we shall find no other reason than that which numerous witnesses unanimously testify, namely: that he took him in because of his saintly reputation. Furthermore, the Orator vehemently denied that the Censor could bring forward a single witness to claim that the knight Wochinger was the sole author of the accounts being narrated. He presented Witness

Translated by churchlatin.ai, a product of Boyne Archives

II, who stated: "I received from the priests of the parish of St. Sebastian"; Witness III, who stated: "I received from other friends and citizens of the same Venerable..."; and from all those who frequented the home of the Duke Wochinger, and from all the citizens of Castel Nuovo: Witness V, who stated that he had received information from a woman whose daughter the Venerable had cured; Witness IV, who stated that he had received information from a priest from Lucca Gallio: Witness III, who not only heard that the Venerable Servant of God's virtues were proclaimed by many, but also saw him on several occasions, especially in Genoa, kneeling and praying before the image of the Virgin Mary, and so it was widely known. Furthermore, regarding what the witnesses reported, they often stated: "It is a public reputation among those who knew the Venerable"; "I heard from many: it was and is a public opinion, and similar things." It is therefore futile for the Censor to suggest that the sole source of public reputation was the praised knight, who, through sweet words, is accustomed to composing speeches for soldiers; which is the very sentiment that the Orator refuted: for the Censor, through those words, admitted the existence of the saint's reputation; on the contrary, the Orator demonstrated that the soldiers spoke of it not because the Duke was accustomed to composing speeches for soldiers, but because of the knowledge of the sanctity that shone with its own light. Presenting these two testimonies, the Orator demonstrated that in the home of the Duke, the Venerable Servant of God was often subjected to insults by the servants of the same Duke, during the time when he was absent, and was not viewed favorably by all.

[*Latin ed. p. 480*]

480. In Naples, or Pinnen, the testimonies, from which the witnesses demonstrate and attest to the remarkable patience of the Servant of God, who, without ever complaining, constantly endured all these things. Not only the soldiers, and even less so because they are molded by the example of their leader, as if this were a military exercise, but all were moved to tears. I shall present one testimony from among those given by the Orator: "When the news spread throughout the town that the Venerable was about to die, many, especially the soldiers, rushed to see the Venerable one last time, whom they held in great esteem for his sanctity, and all were overcome with admiration when they saw him, utterly weakened, immediately rising from his bed, and before anyone could expect the customary words of piety to be offered by a priest, he himself burst forth with such tender, fervent, and sublime actions, that he seemed like a Seraphic angel, so that all, especially the soldiers, were moved to tears." Note the words: "all," and not just the soldiers. Another witness states: "The entire population of the town, of every kind, intervened." Furthermore: "The Venerable still enjoys a reputation for sanctity among all, of every kind, including among ecclesiastical men, wealthy people of both sexes, and religious." Moreover,

Translated by churchlatin.ai, a product of Boyne Archives

this is not limited to Naples alone, but also to other provinces, such as Messina in Calabria, Palermo in Samnium, and Campagna. Indeed, it extends beyond Italian borders, reaching Belgium and even France, where a summary of his life, written in French, has been published in Rome. Thus, the witnesses have testified in the Apostolic process without any exception. Doubt: "Whether it can be established with sufficient validity and relevance, by the authority of the Apostolic process constructed in Naples, based on the reputation for sanctity of the life, virtues, and miracles of the aforementioned Venerable Servant of God, in the case and for the purpose of what is being considered."

RESOLUTION. The Congregation of Rites, having knowledge of the matter in the meetings held on June 14, 1873, and having heard, as is customary, the testimony of the Faith.

[*Latin ed. p. 481*]

Naples or Penne. 481. The Promoter of the Faith opined: affirmatively, provided that the testimony of the first witness be considered as pure evidence. And thereupon, the following Decree was issued: Naples or Penne. Concerning the Beatification and Canonization of the Venerable Servant of God, Nuntius Sulpritii, a young man from the Diocese of Penne. DECREE. "Whereas, on the Ides of February of the current year, the most holy Pope Pius IX, with paternal benevolence, ordered that an investigation be conducted in the Ordinary Congregation of Sacred Rites, without the intervention or vote of the Consultors, at the request of the Reverend Father Canon Joseph Maria Coselli, appointed Postulator of this Cause, and the Reverend and Most Reverend Cardinal Aloysius Bilio, Promoter of this Cause, the following question was proposed for discussion at the Ordinary Meetings of the Sacred Rites held today in the Vatican: Whether it is established that the process conducted in Naples, with Apostolic authority, concerning the fame of the sanctity of life, virtues, and miracles in general of the aforementioned Venerable Servant of God, is valid and relevant in this case and for the purpose in question? The Eminent and Reverend Fathers, entrusted with the safeguarding of the Sacred Rites, after mature deliberation, and after hearing the Reverend Father Lawrence Salvati, Assistant to the Promoter of the Sacred Faith, judged that the answer should be: Affirmatively, provided that the testimony of the first witness be considered as pure evidence. June 14, 1873. "These matters, faithfully reported by the undersigned Secretary to the Most Holy Pope Pius IX, were ratified and confirmed by His Holiness. On the 19th day of the same month and year." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Rites. L. * S. D. Bartolini, Secretary of the Sacred Rites. FROM WHICH YOU MAY GATHER: I. Nothing is treated with such meticulous judicial rigor within the Holy See, through a lengthy process established by the Decrees of Urban VIII, as the causes of the Servants of God. II. A process completed

Translated by churchlatin.ai, a product of Boyne Archives

with ordinary authority, which is considered sufficient for any cause, Acts, vol. VII, page 79.

[*Latin ed. p. 482*]

482 In Naples, or Pienza, the matters concerning the Servants of God serve almost entirely to move the Holy See, so that it may undertake to examine the cause itself. III. Therefore, after the introduction of the cause, once it has been admitted according to the ordinary process before the Apostolic See, the cause truly and properly begins to be carried out through many steps and processes, by the authority of the Apostles; as if, after all the great labor undertaken in the Curias according to the ordinary process, nothing had been accomplished. IV. Hence, the final judgments concerning the causes of the Servants of God should, indeed, be considered certain based solely on human prudence, so that all human faith might waver if they were to be rejected as uncertain. V. In the matter in which judgment was given concerning the general reputation for sanctity, the first witness was rejected, as not providing sufficient evidence by itself, because he had performed the office of Postulator in the ordinary process, although otherwise suitable, and bound by a new oath in the Apostolic process to speak candidly about the truth. DECREES OF CANONIZATION. Parisian. Concerning the Beatification and Canonization of the Servant of God, Sister Theresa of Saint Augustine, a professed nun of the Order of Discalced Carmelites. DECREE. "On the tenth day before the Kalends of May in the year 1869, when the Most Holy Pope Pius IX graciously permitted that the matter concerning the Servant of God, Sister Theresa of Saint Augustine, a professed nun of the Order of Discalced Carmelites, be considered in the Ordinary Congregation of the Congregation for Sacred Rites, without the intervention and vote of Consultors, although less than ten years had elapsed from the day of the presentation of the Ordinary Process in the Acts of the Congregation for Sacred Rites, and without even the examination and review of her own writings, thus the Cardinal Prosper Caterini, promoter of this cause, at the request of the Reverend Father Hippolytus of Saint Calcedonius, a priest, professed and General Postulator of the causes of Beatification and Canonization of the Servants of God of the Order of Discalced Carmelites, having considered..."

[*Latin ed. p. 483*]

Decrees concerning the canonization of 483 were presented to distinguished men, whether of ecclesiastical or civil standing, who were assembled in the Ordinary Sessions of the Congregation for Sacred Rites in the Vatican on this day, to discuss the following question: Whether the Commission for the Introduction of this Cause should be signed in this case and for the purpose in question? And the Sacred Congregation itself, after mature deliberation and having heard the Reverend Father Lawrence Sal-

Translated by churchlatin.ai, a product of Boyne Archives

vati, Assistant Promoter of the Holy Office, decided to respond as follows: Affirmative, that is to say, the Commission should be signed, if it pleases the Most Holy Father. On June 14, 1873.

"Subsequently, a faithful report of the above was made to His Holiness, our Lord Pope Pius IX, by the undersigned Secretary, and His Holiness approved and confirmed the judgment of the Sacred Congregation, and signed the Commission for the Introduction of the Cause of the Venerable Servant of God, Sister Theresa of Saint Augustine, with his own hand. On the 19th of the same month and year."

C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect, Sacred Congregation.

L. D. Bartolini, Secretary, Sacred Congregation.

Amelia, concerning the beatification and canonization of the Venerable Servant of God, Father Generose Maria of Praemosello, a professed priest of the Order of Friars Minor of the Observance of Saint Francis.

DECREE.

"Whereas, on the 13th of the Kalends of April of the current year, our Most Holy Father Pope Pius IX graciously ordered that an examination be made in the Ordinary Session of the Congregation for Sacred Rites, without the intervention or vote of Consultees, regarding the sanctity of life, virtues, and miracles of the Venerable Servant of God, Generose Maria of Praemosello, a professed priest of the Order of Friars Minor of the Observance of Saint Francis, at the urging of the Reverend Father Bernardino of the Crypts, a professed priest and General Postulator for the Causes of Beatification and Canonization of the Servants of God of the Order of Friars Minor of the Observance of Saint Francis; and whereas, the Eminent and Reverend Cardinal Charles Sacconi, Promoter of this Cause, proposed the following question to be discussed in the Ordinary Sessions of the Congregation for Sacred Rites held in the Vatican on the aforementioned date: Whether the validity and relevance of the process conducted in the City and Diocese of Amelia regarding the fame of the sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God are established in this case and for the purpose in question? The Eminent and Reverend Fathers entrusted with the preservation of the sacred rites, after mature deliberation, and having heard the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Office, decided to respond as follows: Affirmative. On June 14, 1873.

[*Latin ed. p. 484*]

Decree 484 concerning canonization: "Having faithfully reported the foregoing to the Most Holy Pope Pius IX, His Holiness approved and confirmed the Decree of the Sacred Congregation. On the 19th day of the same month and year." C. Card. PATRIZI, Bishop of Ostia and Velletri,

Translated by churchlatin.ai, a product of Boyne Archives

Prefect of the Sacred Congregation. L. D. Bartolini, Secretary of the Sacred Congregation. Vicenza or Venice, concerning the beatification and canonization of the Venerable Servant of God, Father Anthony Pagani, a priest of the Order of Friars Minor of the Observance of Saint Francis. DECREE. "In the presence of the Reverend Father Bernardino from the Crypts of the Castle, a priest of the Order, and the General Postulator for the causes of beatification and canonization of the Servants of God of the Order of Friars Minor of the Observance of Saint Francis, and after the Reverend and Most Reverend Cardinal Aloisius Bilio, promoter of this cause, proposed the following question at the Ordinary Congregations of the Sacred Rites held today in the Vatican: Whether the judgment of the delegate judge appointed by the Bishop of Vicenza concerning the aforementioned cult of the Venerable Servant of God, or concerning the obedience rendered to the decrees of His Holiness Urban VIII, should be confirmed in the case and for the purpose in question? Furthermore, after careful consideration by the Reverend Fathers presiding over the Sacred Rites, and after hearing the Reverend Doctor Lawrence Salvati, Assistant Promoter of the Holy Faith, it was decided to respond: Affirmative, that is, the judgment should be confirmed. June 14, 1873. "Afterward, a faithful report of the foregoing was made to the Most Holy Pope Pius IX by the undersigned Secretary, and His Holiness deigned to approve and confirm the Decree of the Sacred Congregation. On the 19th day of the same month and year." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. D. Bartolini, Secretary of the Sacred Congregation. Lucca, concerning the beatification and canonization of the Venerable Servant of God, Aloysius Mary Baudouin, founder of the Congregation of the Daughters of Mary Immaculate and of the Society of the Ursulines of Jesus, commonly known as De Chavagnes. DECREE. "In the presence of the Reverend Monsignor Gustavo Gallot, Honorary Chamberlain to the Most Holy Pope Pius IX, and the Postulator for this cause, and after the Reverend and Most Reverend Cardinal John Baptist Pitra,

[*Latin ed. p. 485*]

The decrees concerning the canonization of the aforementioned cause state that, following a deliberation held on this day in the ordinary meetings of the Sacred Rites Congregation in Vatican, the following question was proposed: Whether the judgment of the Most Reverend Bishop of Lucion, concerning the aforementioned cult of the Venerable Servant of God, or concerning obedience to the decrees of His Holiness Pope Urban VIII, should be confirmed in this case and to the effect of what is being considered? Furthermore, after careful consideration by the aforementioned Most Reverend Fathers entrusted with the preservation of the sacred rites, and after hearing the voice and the written opinion of the Reverend Father

Translated by churchlatin.ai, a product of Boyne Archives

Lawrence Salvati, Auxiliary Promoter of the Holy Faith, it was decided to respond: Affirmative, that is, the judgment should be confirmed. On September 27, 1873. "Subsequently, a faithful report of the aforementioned matters was presented to the Most Holy Pope Pius IX by the undersigned Secretary, and His Holiness deigned to declare the decree of the Sacred Congregation to be entirely approved and confirmed. On October 2 of the same year." Cardinal Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. D. Bartolini, Secretary of the Sacred Congregation. From Dijon, concerning the beatification and canonization of the Venerable Servant of God, Benignus Joly, canon of the church of Saint Stephen in the city of Dijon. DECREE. "At the request of the Most Reverend Canon Gustavo Gallot, Honorary Chamberlain to the Most Holy Pope Pius IX, and Promoter of this cause, the aforementioned Most Reverend Cardinal John Baptist Pitra, also Promoter of this cause, proposed the following question in the ordinary meetings of the Sacred Rites held on this day in Vatican: Whether the judgment of the Judge delegated by the Most Reverend Bishop of Dijon, concerning the aforementioned cult of the Venerable Servant of God, or concerning obedience to the decrees of His Holiness Pope Urban VIII, should be confirmed in this case and to the effect of what is being considered? Furthermore, after careful consideration by the aforementioned Most Reverend Fathers entrusted with the preservation of the sacred rites, and after hearing the voice and the written opinion of the Reverend Father Lawrence Salvati, Auxiliary Promoter of the Holy Faith, it was decided to respond: Affirmative, that is, the judgment should be confirmed. On September 27, 1873. "Subsequently, a faithful report of the aforementioned matters was presented to the Most Holy Pope Pius IX by the undersigned Secretary, and His Holiness deigned to declare the decree of the Sacred Congregation to be entirely approved and confirmed. On October 2 of the same year." Cardinal Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. D. Bartolini, Secretary of the Sacred Congregation.

[*Latin ed. p. 486*]

486 Decrees concerning the canonization in Naples. Concerning the beatification and canonization of the Venerable Servant of God, Father Michael Angelus of Saint Francis, a lay brother of the Order of Friars Minor Observant of the Strict Observance of Saint Peter of Alcantara, of the Neapolitan Province. DECREE. "In the cause of beatification and canonization of the aforementioned Venerable Servant of God, Michael Angelus of Saint Francis, since it was necessary to act in the Ordinary Congregation of Sacred Rites concerning the validity of all processes constructed in this same cause, at the request of the Reverend Father, Brother Hyacinthus of the Virgin Mary, a priest of the aforementioned Order, and Postulator of this cause, therefore, the Most Reverend Cardinal Prosper Caterini, Promoter of this cause, proposed the following question in the ordinary meetings of the

Translated by churchlatin.ai, a product of Boyne Archives

Sacred Rites held today in the Vatican: Does it appear that the processes, both those of Apostolic and Ordinary authority, constructed in this cause, have been properly and lawfully conducted? Have the witnesses been duly and correctly examined, and have the testimonies been legitimately obtained, in the case and for the purpose in question? Furthermore, the Most Reverend and Reverend Fathers, entrusted with the safeguarding of the sacred rites, after a careful examination of all matters, and after hearing the Reverend Doctor Lawrence Salvati, Assistant to the Promoter of the Holy Faith, judged it fitting to respond affirmatively. On September 27, 1873. "The aforementioned matters were reported to the Most Holy Lord, our Pope Pius IX, by the undersigned Secretary, and His Holiness, having deigned to ratify and confirm the judgment of the Sacred Congregation. On October 2, in the same year." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Rites. S. D. Bartolini, Secretary of the Sacred Rites. From Rodez (-Vabres). Concerning the beatification and canonization of the Venerable Servant of God, Sister Mary William Emilia of Rodez, foundress of the Congregation of Sisters of the Holy Family. DECREE. "At the request of the Reverend Monsignor Gustavo Gallot, Honorary Chamberlain to the Most Holy Lord, our Pope Pius IX, and Postulator of this cause, therefore, the Most Reverend and Reverend Cardinals, John Baptist Pitra, in place and instead of the Most Reverend Cardinal Charles Sacconi, absent as Promoter of the same cause, proposed the following question in the ordinary meetings of the Sacred Rites held today in the Vatican: Should the judgment of the judge delegated by the Most Reverend Bishop of Rodez concerning the cult of the aforementioned Venerable Servant of God be confirmed, or should obedience to the decrees of the blessed Urban VIII be observed, in this case and for the purpose in question?"

[*Latin ed. p. 487*]

Concerning the decrees for canonization, number 487 is addressed. Furthermore, the Fathers of Rome, entrusted with safeguarding the sacred rites, after careful consideration, and having heard the voice and the written statement of the Reverend Lawrence Salvati, Coadjutor Promoter of the Holy Faith, deemed it necessary to respond. Affirming, or rather, to confirm the judgment. On September 27, 1873. "Subsequently, the aforementioned matters concerning the above were faithfully reported to His Most Holy Lord Pope Pius IX by the undersigned Secretary, and His Holiness deigned to declare the Rescript of the Sacred Congregation to be entirely valid and to confirm it. On October 2 of the same year." C. Cardinal PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. D. Bartolini, Secretary of the Sacred Congregation. Rome. Regarding the beatification and canonization of the Venerable Servant of God, John Baptist De la Salle, Founder of the Christian Schools. DECREE. "The Venerable Servant of God, John Baptist De la Salle, was born in Rheims, of noble

Translated by churchlatin.ai, a product of Boyne Archives

and pious parents. He passed his youth innocently and with a pure heart, and he pursued the courses of study. Having been co-opted among the Canons of the Metropolitan Church of Rheims, and having received Holy Orders, he was an example of fidelity in word, in conversation, in charity, in faith, in chastity. Remembering the words of divine Wisdom with himself: 'Come, children, hear me,' I will teach you the fear of the Lord, and also that admonition of Christ: 'Let the little children come to me, for the kingdom of heaven belongs to such as these,' he began to gather poor and wandering young people, and he diligently taught them the duties of piety and the rudiments of letters. However, in order to bring this arduous work to that growth by which it might bear abundant fruit, he attracted pious laymen to himself, whom, through salutary instructions, he made his collaborators in establishing the Christian Schools Association. And since at that time the Jansenist plague was spreading throughout France, threatening to dissolve the unity of the Catholic Church, the Servant of God drew closer to the Chair of Peter; and he sent one of his brothers to Rome, who, from the Supreme Pontiff Clement XI, a staunch opponent of this heretical perversion, obtained confirmation of the Association, and opened a school for boys in the city under his watchful eye. But the most esteemed followers of the Jansenist heresy, perceiving the damage that would result to them from this sound and pious institution for young people, so harassed him with insults, calumnies, and vexations until the very end of his life, that he himself was among them."

[*Latin ed. p. 488*]

488 The decrees concerning the canonization, having witnessed the fervor for the Sacraments of the Church and the most patient communication with the sufferings of Christ, moved the soul on the seventh of the Ides of April, a Friday, in the year 1719. "After his death, the fame of his holiness spread so widely that even his enemies, who had reviled him while he was alive, proclaimed him a just and holy man. Due to the disturbances in France, the proceedings were initiated more slowly by the Ordinary authority in Rheims, Paris, and Rouen; when these were brought to the City, and duly examined, Pope Gregory XVI, by his own hand, signed the Commission for the Introduction of the Cause on the eighth of the Ides of May in the year 1839. Subsequently, letters were sent to the Archbishops of Paris, Rheims, and Rouen, ordering them, by Apostolic authority, to again inquire into the fame of sanctity, the virtues, and the miracles of the Venerable John Baptist. After the investigation was completed and the proceedings were brought here for examination, the Congregation of Sacred Rites gave its judgment on the eve of the Ides of September in the year 1845. Afterwards, a judgment was held in the same Congregation of Sacred Rites concerning the heroic virtues of the Venerable Servant of God. And first, in the Preliminary Meeting held with the Most Reverend Cardinal John

Translated by churchlatin.ai, a product of Boyne Archives

Baptist Pitra, the Relator of the Cause, on the seventeenth of the Kalends of July in the year 1869. Secondly, in the Preparatory Meeting held at the Vatican Palace on the eve of the Nones of June in the year 1872. Thirdly, finally, in the General Congregations held before His Holiness Pope Pius IX, the Supreme Pontiff, in the same Vatican halls on the sixth of the Ides of July in the year 1873. In which, when the Most Reverend Relator of the Cause proposed for discussion the question: "Does it appear that the theological virtues of Faith, Hope, and Charity in God and in neighbor, as well as the cardinal virtues of Prudence, Justice, Fortitude, and Temperance, with their associated qualities, were present in a heroic degree, in this case, and to the effect of what is being considered?" all the Most Reverend Cardinals entrusted with the Sacred Rites, and the Consultor Fathers, presented their opinions. But the Most Holy Pope did not immediately reveal his mind, and in the meantime, he urged those present to offer prayers to obtain light and counsel from divine wisdom. "Finally, with God's favor, he chose this day, the feast of All Saints, to pronounce the final judgment. Therefore, the Blessed Father, after first offering the Eucharistic Sacrifice in the private chapel of the Pontifical buildings, entered this noble hall, and called to him the Most Reverend Cardinal Constantinus Patrizi, Bishop of Ostia and Velletri, Dean of the Sacred College, and Prefect of the Congregation of Sacred Rites; together with the Most Reverend Cardinal John Baptist Pitra, the Relator of the Cause; together with the Reverend Father Lawrence Salvati, Assistant to the Promoter of the Holy Faith, and myself, the undersigned Secretary; and in their presence, he solemnly declared: "It is established that the theological virtues of Faith, Hope, and Charity in God and in neighbor, and also the cardinal virtues of Prudence, Justice,

[*Latin ed. p. 489*]

Decree concerning canonization, 489: With fortitude, temperance, and their associated virtues, the Venerable Servant of God, John Baptist de la Salle, practiced them in a heroic manner, so that proceedings may continue to the examination of four miracles. "This decree was ordered to be made public and recorded in the acts of the Congregation of Sacred Rites on the first of November of the year 1873." C. Card. PATRIZI, Bishop of Ostia and Velletri, Sacred Roman College, Prefect. "S. D. Bartolini, Sacred Roman College, Secretary. FROM THE SACRED CONGREGATION OF THE INDEX: On Wednesday, the second of August, 1873. "The Sacred Congregation of Most Eminent and Reverend Cardinals of the Holy Roman Church, appointed by the Most Holy Lord, our Pope Pius IX, and the Holy Apostolic See, to oversee the Index of books of corrupt doctrine, and also their prescription, expurgation, and permission throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on July 14th, 1873, and again on August 26th of the aforementioned year, condemned and condemns, proscribes and proscribes, or ordered and orders that the

Translated by churchlatin.ai, a product of Boyne Archives

following works be referred to the Index of Prohibited Books: "D'Orient A, *De la destinée de l'âme avec des considérations prophétiques pour reconnaître le temps présent et les signes de l'approche des derniers jours*; new edition... preceded by an appeal to Catholics of good faith and to the future Council. Paris, 1868. Decree, July 14th, 1873."

[*Latin ed. p. 490*]

490 Decree: "The Jesuits and the Republic of Venice, diplomatic documents concerning the evil actions of the Jesuits against the Republic, collected by decree of the Senate on June 14, 1606, and published for the first time with annotations, by the Reverend Giuseppe Cappelletti, a Venetian, on the centenary of their suppression, decreed on July 21, 1773, by Pope Clement XIV. Venice, 1873."

Decree, ibid.: "Buchmann, T., *The Unfree and the Free Church in their Relations to Slavery, to Tyranny of Faith and Conscience, and to Daemonism*. Breslau, 1873. In Latin: *De Ecclesia serva et libera, eiusque relationibus ad servitutem, ad tyrannidem in rebus fidei et conscientiae, et ad Daemonismum*. Wratislaviae, 1872." Decree, August 26, 1873.

"Frohschammer, G., *The New Knowledge, and the New Faith, with particular consideration of D. F. Strauss's latest work: 'The Old and the New Faith'*. Leipzig, 1873. In Latin: *Nova scientia et nova fides, etc.* Leipzig, 1873." Decree, August 26, 1873.

"Huber, D. Ioan., *The Order of the Jesuits, according to its Constitution and Doctrine, Activity and History, characterized*. Berlin, 1873. In Latin: *Ordo Iesuitarum designatus secundum propriam constitutionem, doctrinam, etc.* Berlin, 1873." Decree, August 26, 1873.

"The Theological Studies in Austria, etc. Vienna, 1873. In Latin: *Studia theologica in Imperio Austriaco, etc.* Vienna, 1873. (Decree of the Sacred Congregation, February 4, 1873)." The author commendably submitted [his work].

"Therefore, no one of whatever rank and condition, daring to publish or, after publication, to read or retain the aforementioned works, in any place and in any language, shall be held to deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books."

"These matters, having been related to Our Most Holy Lord Pope Pius IX by me, the undersigned, Secret [Agent], His Holiness..."

[*Latin ed. p. 491*]

The Decree was approved, and its promulgation was ordered (491). In order that this may be believed, etc. Given in Rome on the 30th of August, 1873. ANTONINUS Cardinal DE LUCA, Prefect. L. & S. Fr. Hieronymus Pius Saccheri, Order of Preachers, 6th Indiction. Congregation of the Secret.

Translated by churchlatin.ai, a product of Boyne Archives

APPENDIX, ARTICLE XLII. Concerning craniotomy, or the killing of a child in the womb of the mother, so that the mother may be saved from certain death. In learned periodicals which are published monthly in Gallia (Amiens), under the title *Revue des sciences ecclésiastiques*, in the fascicle of September 1873, I read an article, *L'embryotomie au point de vue moral*, in which the anonymous author makes certain observations against the article which I wrote on page 285 and following, concerning craniotomy, or the killing of a child in the womb of the mother, so that the mother may be saved from certain death. It is fitting to present such observations, which will serve to elucidate this most serious question. Therefore, the author, our friend, impugning the external aspect of my argument, observes that it is the opinion of all theologians that the operation of embryotomy, even if it were considered as the only means of saving the mother, is not permissible. And since I conceded that this is the common opinion, but not so that there are no exceptions, so that I thought it better to say that it is almost the common opinion, I myself reprove this my expression, affirming that the common opinion is so that no one at all is excepted, whether among the ancients or among the moderns, so that it must be held as the doctrine of a unanimous school of theologians, to which no one can object without falling into the censure of Melchior Cani: to contradict the unanimous opinion of a school of theologians concerning matters of faith or morals, if it is not heresy, is at least very close to heresy.

Our adversary endeavored to prove this unanimous opinion with a twofold argument: 1° with an argument *ad hominem*, as the logicians call it.

[*Latin ed. p. 492*]

492 Appendix XI: The author states that he is demonstrating that the authors he mentions are not to be considered as being contrary to the common opinion, because he had written: "In the present question, two points must be noted: 1° that the authors do not speak accurately when they say that this opinion is that of all; for Sánchez himself cites three authors who argue the contrary, at least two of whom are important, namely Marianus Socinus... and the most celebrated Felinus, both in chapter 'Si quis de homicidio,' and a third is Simon of Brixiensis in Clementine, book 1, on the same topic." And at the end of the article, he added: "Among the more recent authors, I have heard that the Most Reverend Kenrick, Archbishop of St. Aloysius, defends this opinion, having abandoned the old one; however, I have not been able to consult his work." 2° The opponent supports his assertion by referring the reader to a certain learned dissertation on embryotomy, which he himself had inserted in the same French journals a year earlier. And with regard to the argument *ad hominem*, he says that he has led him into error by affirming that the Most Reverend Archbishop Kenrick supports his opinion, when this author teaches the contrary with these words: "It

Translated by churchlatin.ai, a product of Boyne Archives

must be understood that it is never permissible to give a medicine that is intended to cause an abortion, for example, to compress the head in the womb to facilitate its passage, nor is it permissible to excise the fetus with instruments, so that it is extracted in parts: for this is the killing of a human being, which is evil in itself, and therefore it cannot be permitted, even to save the life of the mother. But that both [mother and fetus] may perish unless help is given to one, happens by natural causes, without anyone's fault, since he who would help the other would be sinning against the other. Therefore, the warning of Ambrose is appropriate: 'If it is not possible to help one without harming the other, it is better to help neither than to harm one.'" This is the opinion of the learned Archbishop, *Theologia Moralis*, volume 1, number 128. This is indeed true; nevertheless, I will then explain how I have not been entirely led into error. Regarding the other three authors, whom I said were cited by Sánchez as arguing the contrary, of whom the first two are important, namely Marianus Socinus and Felinus, our opponent notes that Sánchez writes: "Therefore, Marianus Socinus, in 'Si quis de homicidio,' and Simon of Brixiensis, in Clementine, book 1, on the same topic, whom Felinus cites in 'Si quis,' are not to be heard, because they define nothing, where they assert without distinction that it is permissible to kill the fetus in the womb if the mother's life is in danger." Therefore, according to Sánchez, Felinus does not define anything. And indeed, Felinus wrote in the aforementioned passage: "What, then, about a pregnant woman, whom doctors say cannot escape death unless the existing fetus is killed by a potion or otherwise? Is she to be excused if she does so? Dom. Marian says yes, and cites Simon of Brixiensis in Clementine, book 1, on homicide, and says that he argued in this way. But consider." Our opponent concludes from this that the author, who speaks in this way, cannot be cited as being contrary to the common opinion.

[*Latin ed. p. 493*]

Appendix XI 493 Concerning Marianus Socinus, whom Sánchez cites, our opponent has likewise extracted words from his works, which are as follows: "Finally, I introduce a noteworthy question, which occurs daily in practice. Suppose that a skilled physician, unable to help a sick and pregnant woman more quickly according to the art of medicine, and knowing that she would inevitably die in childbirth, advised her to have an abortion, and the woman followed the doctor's advice. Is the doctor to be blamed? And what of the woman? Simon of Bursano, in Clementine I, in the same title, holds that it is so... This question is noteworthy, but for the present, I do not wish to decide it, because perhaps we will discuss it with God guiding her." Then our opponent concludes that he does not know how the most celebrated Felinus could have cited such authority from Marianus Socinus in the aforementioned text, since Socinus explicitly states that for the present, he does not wish to decide; but it is certain that Socinus' au-

Translated by churchlatin.ai, a product of Boyne Archives

thority cannot be cited in favor of a new opinion. But Socinus, promising to resolve the question in chapter "To the Audience on Homicide," page 336, once again raises the question: "What about the doctor or other person who advised an abortion to a pregnant woman?" (He responds) "Find the solution in what I have said above." But above, in question 217, he stated, "Regarding the doctor, all are considered irregular if it is certain that the birth was of a living being." Having related these things, our opponent concludes that it is useless to insist further; for two serious authors have been cited who cannot be invoked against the common opinion. Moreover, he readily admits that only Simon of Brixia, or of Bursano, is the author of the obscene name. All the more so, because, according to Socinus, he had written thus: "Is the doctor to be blamed, and what of the woman? Simon of Bursano holds that it is so. He argues because abortion is of the genus of prohibited evils. On the contrary, it seems that more things concur for which at least the woman should be excused. First, the authority of the doctor, which is great, etc." From these words, the same author can be judged. After these things, he adds several things that are not relevant to the matter, which I omit, both so that I do not waste time, and also so that I do not say anything in my response that the opponent might later regret, although, when writing, I will not neglect anything that may require a response. Then, referring the reader to the authorities that he had cited in his dissertation, which is inserted in the praised journal *Revue*, volume V, in the year 1872, pages 194 and 298, he concludes that it is true what he had proposed, that is, that so far there has been no theologian, or author of moral theology, in any work, who has affirmed that embryotomy is permissible, even to save the life of the mother; indeed, all, whether ancient or modern, have either explicitly or implicitly proclaimed the absolute illicitness thereof. This is a synopsis of the opposing article. As for the authorities of theologians, which he himself cited in his learned dissertation to which he refers the reader, page 194,

[*Latin ed. p. 494*]

494 Appendix XI These are: Sánchez de matr. I. 9 disp. 29 n. 14; Sporer Theol. Sacr ciment, p. 4 c. 4 n. 710; Salmanticenses tract. 13 de Restitui, c. 2 n. 60; Diana, de tutiorismo certe non suspectus, tract. 6 de abortu Resol. 40. In the aforementioned article, p. '298, the author opposes the authority of Gury in the work *Casus conscientiae*, de quinto praecepto Dec. casus 10, and the authority of another article in the same *Revue théologique*, in which the Reverend Craisson had long ago resolved a certain case related to our question. However, the opponent observes that in the solution of these cases, it is not a question of embryotomy, but of accelerating the delivery, whereby the fetus passes from the uterus, in which it could no longer live, to another medium in which it also dies, that is, outside the uterus: it is a question of medicinal abortion. Furthermore, he opposes the

Translated by churchlatin.ai, a product of Boyne Archives

authority of St. Alphonsus in a case in which a child is born already dying and cannot be baptized unless with ice-cold water, which would accelerate its death; in which case, I. 6 n. 106 *in fine*, St. Alphonsus teaches: "It is permissible to disregard that small loss of life so that the child may attain eternal life." But, the opponent adds, this teaching of St. Alphonsus cannot make embryotomy permissible. Nor can the opinion of the most serious doctors be dismissed, who state that it is permissible to give to a mother afflicted with a mortal illness a medicine to directly expel the fetus, since they speak of a fetus not yet animated, cf. St. Alphonsus I. 3 n. 394; nor the reason they adduce, namely, that the fetus can be expelled as an aggressor of the mother's life; especially since they speak of an aggression of a physical and material nature, as would be an aggression against the humors of the human body tending towards health: such theologians consider the inanimate fetus as a part of the viscera. Finally, the opponent concludes with an artificial argument from the teaching of Cardinal De Lugo, *de Iust. et iure*, dissert. 10 n. 123 and following. This author, in the question of whether it is permissible, at least indirectly, to kill an innocent person, wrote among other things: "And first, it is often asked, 'When does an unjust aggressor... protect himself by opposing to you an innocent child, so that he may not be struck by you, is it permissible, if otherwise you cannot strike him, to strike him even through that very child opposed to you?' Some seem to deny it. Others, more commonly and truly, affirm... The reason is, because just as the action of one who burns the innocent in a tower together with the guilty, is permissible, because the intention of the agent is only to burn the guilty, although here and now the burning of these cannot be separated from the burning of those; so the action by which a man seeks the unjust aggressor, is only intended by the agent to strike him, although here and now that blow cannot harm him."

[*Latin ed. p. 495*]

Appendix XI 495 « Likewise, the innocent is sometimes involved as an intermediary, due to the local conjunction [L of both: therefore, just as that burning is permitted, so too is this blow; « for it uses its right to direct the sword against the wrongdoer through that « proper way; but it is accidental that in that intermediate space « the innocent is also found... « However, take note, for this and other cases, when we say that the « killing of the innocent is sometimes permitted, when it is not intended, or « when it is not the case that it is intended as an end, so that it is « permitted when it is taken as a means to kill the wrongdoer; here the « meaning would be false; for whether it is intended as an end, or chosen as « a means, it is always illicit if you directly will it. Therefore, if you were to « kill an innocent person, wanting to do so in order to kill the wrongdoer, you would already « directly will and intend the killing of the innocent, which is never « permitted. Therefore, in the case just mentioned, if you see that « you

Translated by churchlatin.ai, a product of Boyne Archives

cannot kill the attacker, who is protecting himself with an infant, unless you first « kill the infant, and thus you can freely attack the enemy with another « blow... that action would be illicit, because that blow directly and of itself tends « towards the death of the infant, which you take as a means to kill « the enemy afterwards." With this teaching of Cardinal De Lugo brought to bear, our opponent concludes his dissertation, applying it thus to embryotomy: through the operation of embryotomy, the head of the fetus is broken, so that through this means the unfortunate mother may be saved; therefore, it begins with an act that is truly and really a blow that directly and of itself tends towards the death of the infant, which is taken as a means; which is, indeed, never permitted. With these things that I have indicated or summarized from his dissertation, I will respond in other articles. It is also worth noting what the opponent reports in the same dissertation regarding the practical use of embryotomy. From the renowned Doctor Ozanam, who long ago defended the so-called Cesarean operation, it is noted that the case in which neither the mother nor the children can be saved, unless the living child is extracted by forceps, is very speculative. Indeed, the praised Ozanam (cf. Gazette des Hôpitaux n. of August 12, 1862) wrote: « In practice, such a case never occurs. Nor can it be said that embryotomy infallibly « preserves the life of the mother, since, with a reasonable proportion, at least among eight or ten of these operations, some mother « will succumb. Furthermore, although some of our contemporaries « claim otherwise, it would not be right to eliminate another means, and a « refuge of medical art in the case of impossibility of childbirth, that is, the ancient « Cesarean operation, which operation usually saved both « the mother and the child. Finally, it should be noted that the infant, when « it regularly dies in the womb before the mother, « and the mother's death does not immediately follow, it can regularly be expected that the moment « when the operation is performed on the small corpse, and thus the operation.

[*Latin ed. p. 496*]

498. Apostolic Letters demonstrate how truly and justly We have repeatedly declared and impressed upon you that the sacrilegious usurpation of Our jurisdiction has, above all, aimed to undermine the power and efficacy of the primacy of the Papacy, and, if possible, to utterly destroy the Catholic religion itself. "Indeed, it was not Our intention to write to you about these evils that afflict Our City and, indeed, all of Italy; rather, We might perhaps suppress these sorrows in silence, if Divine mercy were to grant Us the power to alleviate the most grievous pains by which so many Venerable Brothers, sacred pastors, and their clergy and people in other regions are afflicted. "For you know, Venerable Brothers, that in certain cantons of the Helvetic Confederation, not so much compelled by heterodox factions, of which indeed some have condemned the deed, as by active agents of

Translated by churchlatin.ai, a product of Boyne Archives

sects who today hold power everywhere, have completely subverted order, and have undermined the very foundations of the Church of Christ, not only contrary to any standard of justice and reason, but also in defiance of publicly declared faith; while, supported by solemn pacts, and also by the suffrage and authority of the laws of the Confederation, the religious freedom of Catholics ought to remain inviolate. We lamented, indeed, in Our Address given on December 23rd of the past year, the violence inflicted upon religious matters by the governments of those cantons, "whether by deciding about dogmas of the Catholic faith, or by favoring apostasy, or by hindering the exercise of episcopal power." But Our just complaints, which were also presented to the Federal Council by Our Delegate, have been completely ignored, and no just consideration has been given to the repeated protests made by Catholics of every order, and by the Helvetic Episcopate; nay, the injuries already inflicted have been compounded by new and more grievous ones. "For, after the violent election of the Venerable Brother Gaspar, Apostolic Vicar of Hebronensis, in Gebennensis, which was as shameful and indecent..."

[*Latin ed. p. 497*]

Apostolic Letters 499 mandate and require that the Government of Gebennensi promulgated two laws on March 23rd and August 26th of this year, which are entirely in accordance with the decree proposed last October, which we had disapproved of in the aforementioned address. Indeed, the same Government arrogated to itself the right to reform the constitution of the Catholic Church in that region, and to impose a democratic form upon it, subjecting the Bishop, both with regard to the exercise of his proper jurisdiction and administration, and with regard to the delegation of his authority to civil power; forbidding him from residing in that region; defining the number and boundaries of parishes; proposing the form and conditions for the election of pastors and vicars, and the cases and manner of their revocation or suspension from office; granting laymen the right to nominate candidates, and also allowing laymen to administer temporal affairs of the Church, and placing them, as it were, in charge of ecclesiastical matters in general. Furthermore, these laws stipulate that, without the permission of the Government, which is indeed revocable, pastors and vicars should exercise no functions, and should not receive any dignities greater than those they have obtained through the election of the people, and that they should be brought before civil authority to swear an oath in words that contain the very definition of apostasy. It is clear to all that such laws are not only invalid and of no force, due to the complete lack of authority in the lay legislators, and who are, for the most part, heterodox; but also that they contain provisions that are contrary to the dogmas of the Catholic faith, and to the ecclesiastical discipline established by the Ecumenical Council of Trent and by Pontifical constitutions, and

Translated by churchlatin.ai, a product of Boyne Archives

which we must therefore entirely disapprove of and condemn. "Therefore, by virtue of our office, we solemnly reject and condemn these laws with our Apostolic authority; and at the same time, we declare that the oath imposed by them is unlawful and utterly sacrilegious; and therefore, all those who, in the region of Gebennensi or elsewhere, dare to perform the functions of the ecclesiastical ministry, having been elected according to the decrees of these laws, or in a similar manner with the support of the people and the confirmation of civil power, are, by that very act,..."

[*Latin ed. p. 498*]

Letters [issued by] the Holy See incur the greater excommunication, especially reserved for this Holy See, and other canonical penalties; and therefore, all such [persons] must be avoided by the faithful, according to the divine precept, as if they were aliens and thieves who kill and destroy. They come not but to steal, to kill, and to destroy.

"Indeed, these things which we have recounted thus far are sad and grievous, but even more grievous things have happened in five of the seven districts, namely, the districts of Solodurn, Berne, Basel-Country, Aargau, and Thurgau, which comprise the Diocese of Basel. There, too, laws have been enacted concerning the parishes, and concerning the election and removal of pastors and vicars, overturning the order of the Church, subverting the divine constitution, subjecting the ecclesiastical ministry to secular domination, and being entirely schismatic; therefore, we condemn and reject these [laws], and especially that one which was enacted by the government of Solodurn on December 23, 1872, and we decree that they are to be considered perpetually rejected and condemned.

"Furthermore, the Most Reverend Brother Eugenius, Bishop of Basel, rightly rejected with righteous indignation and apostolic firmness certain articles which were proposed in a certain assembly, or conference, as they call it, of the diocese, to which delegates from the aforementioned five districts had come, and he had a completely necessary reason for rejecting them, because they would injure the episcopal authority, subvert the hierarchical order, and openly favor heresy; for this reason, he was removed from his office by the bishopric, forcibly taken from his home and driven into exile through fraud or vexation, a thing of this kind. Then, in the aforementioned five districts, the clergy and the people were led into schism; the clergy were forbidden from any commerce with the exiled pastor, and an order was given to the cathedral chapter of Basel to convene for the election of a capitular vicar or administrator, as if the episcopal see were truly vacant; this unworthy deed was vehemently rejected by the chapter with a protest issued by it. In the meantime..."

[*Latin ed. p. 499*]

501 By Apostolic Letters, with the decree and judgment of the civil mag-

Translated by churchlatin.ai, a product of Boyne Archives

istrates of Bern, it was ordered that ninety-six parishes within the territory of Jura should cease their ecclesiastical functions, and then, indeed, abandon their office, for this sole reason: that they had openly testified that they recognized only the Most Reverend Brother Eugene as the legitimate Bishop and Pastor, or that they refused to separate themselves shamefully from the unity of the Catholic Church. As a result, that entire territory, which had steadfastly maintained the Catholic faith, and which had long been part of the Canton of Bern under an agreement guaranteeing the free and inviolable exercise of its religion, was deprived of parochial services, solemn baptisms, marriages, and funerals, while a multitude of faithful, already unjustly brought into this hardship, lamented and protested in vain. They were forced either to receive schismatic and heretical pastors introduced by political authority, or to be deprived of all priestly assistance and ministry. "We, indeed, bless God who, with the same grace by which He once raised up and strengthened the martyrs, now sustains and strengthens that chosen part of the flock of the Catholic Church, which courageously follows its Bishop, opposing the wall for the house of Israel, so that it may stand in the battle on the day of the Lord (1), and, unaware of the footsteps of fear, enters into the very martyrdom of the Head of the Martyrs, Jesus Christ, zealously and steadfastly defending its faith against the ferocity of wolves." The noble constancy of these Swiss faithful is emulated by no less worthy commendation by the clergy and the faithful people in Germany, who also follow the illustrious examples of their prelates. For they have become a spectacle to the world, to angels, and to men, who, clad in the armor of Catholic truth and the helmet of salvation, bravely engage in the Lord's battles on all sides, and their minds are so admired, their invincible fortitude so extolled, that all the more the most bitter persecution against them, which has arisen in the German Empire, and especially in Prussia, increases day by day.

1. Ezekiel 13:5

[*Latin ed. p. 500*]

Letters 502. Apostolic.

"Besides the many and grievous injuries inflicted upon the Catholic Church in the preceding year, the Prussian Government, through the most severe and unjust laws, entirely foreign to the former custom, has subjected the entire institution and education of the secular clergy to such authority that it pertains to this authority to inquire and determine how the clergy are to be educated and prepared for the priestly life and pastoral ministry; and further, it grants to this authority the right to know and judge of any office, and to deprive ecclesiastical benefices, and even sacred pastors, of their office and benefice. Furthermore, in order that the ecclesiastical order and the hierarchical subjection established by Christ the Lord may be more quickly and completely overturned, more obstacles

Translated by churchlatin.ai, a product of Boyne Archives

have been imposed by these same laws, preventing bishops from properly attending to canonical penalties and censures, or to the salvation of souls, or to the soundness of doctrine in Catholic schools, or to the obedience due to them by the clergy; for it is permitted to the bishops, according to these laws, to do nothing except according to the will of the civil authority and according to the standard prescribed by it. Finally, that nothing may be lacking to thoroughly oppress the Catholic Church, a royal tribunal has been established for ecclesiastical affairs, by which bishops and sacred pastors may be summoned, both by private individuals who support them, and by public magistrates, to be judged as if they were criminals, and to be restrained in the exercise of their spiritual ministry. Thus, the most holy Church of Christ, to which the freedom had been solemnly and repeatedly asserted in conventions and agreements of the highest princes, now weeps in those places, stripped of all its necessary and full religious rights, and subjected to hostile forces, which threaten its ultimate ruin; for the new laws pertain to its non-existence. Therefore, it is not surprising that the former religious tranquility has been greatly disturbed in that Empire by such laws and other measures of the Prussian Government offensive to the Church. But to impute the blame for this disturbance solely to the Catholics of the German Empire is entirely unjust. For if these laws are..."

[*Latin ed. p. 501*]

The Apostolic Letters [should be understood] in such a way that those who do not comply with those laws, to which they cannot, with a safe conscience, comply, are not condemned; in the same way, the Apostles and martyrs of Jesus Christ were taxed, who preferred to endure the most terrible torments, even death itself, rather than betray their duty, and to violate the most sacred rights of their religion, obeying the commands of impious persecuting princes. Indeed, Venerable Brothers, if there were no laws other than those of the civil government, and if these, which are of a higher order and which it is necessary to recognize, were to be violated, it would be sacrilege; if, therefore, the same civil laws were to constitute the supreme norm of conscience, as some impiously and absurdly contend, then the ancient martyrs, and those who followed them, would be deserving of reproach rather than honor and praise, as they shed their blood for the faith of Christ and for the freedom of the Church; nay, it would not even have been permissible to found Christianity. However, faith teaches that the Church, despite opposition, must be propagated, and reason demonstrates that there exist two orders of things, and that there are two powers in the world, one natural, which provides for the tranquility of human society and for secular affairs, and the other, whose origin is above nature, which governs the City of God, namely the Church of Christ, divinely instituted for the peace of souls and for eternal salvation. The duties of these two powers are most wisely ordered, so that what is due to God is given to

Translated by churchlatin.ai, a product of Boyne Archives

God, and what is due to Caesar is given to Caesar; for Caesar is great, and his kingdom is great, because every creature is less than heaven. But the Church, for whom heaven is, has never deviated from this divine command; she has always and everywhere striven to impress upon the minds of her faithful the duty of obedience, which they must inviolably observe towards the supreme rulers, and their rights, as far as secular matters are concerned; and she has taught, with the Apostle, that rulers are not to be feared for good works, but for evil. She commands the faithful to be subject not only for fear of punishment, because the ruler bears the sword as an avenger.

[*Latin ed. p. 502*]

Letters 504. The Apostolic See is angered not only by those who commit evil, but also because of conscience, since they are ministers of God in their office. 1. However, this Prince was restrained from evil deeds by fear itself, and was thus completely excluded from observing the divine law, remembering what the blessed Peter taught: "Let no one among you be a murderer, or a thief, or a liar, or a blasphemer; let no one let his conduct be such that it glorifies others; but let God be glorified in your bodies." 2. "Given these circumstances, Venerable Brothers, you can easily understand how much sorrow afflicted Us when We read in a letter recently sent to Us by the German Emperor, accusations no less atrocious than unexpected, against a part, as he himself says, of those Catholics subject to him, and especially against the Catholic clergy and bishops of Germany. The reason for this accusation is that these individuals refuse to obey the laws, remembering the bonds and tribulations, and do not consider their lives more precious than themselves, but rather, with the same constancy with which they had previously protested against those laws, they now express serious, clear, and solid objections, which have been applauded by the entire Catholic world, and by not a few even from among the heterodox, to the Prince, to his administrators, and to the highest assemblies of the Kingdom. For this reason, they are now accused of treason, as if they were in agreement and conspiring with those who strive to disrupt all the orders of human society, despite the countless and most excellent arguments which clearly testify to their unwavering faith and obedience to the Prince, and their ardent zeal for the fatherland. Indeed, We are even asked to urge those Catholics and sacred pastors to obey those laws, which amounts to saying that We should contribute to oppressing and dispersing the flock of Christ. But trusting in God, We are confident that the most serene Emperor will reject such an empty and incredible suspicion, after better understanding the circumstances."

1 Rom. 13, 3, seqq.

1 Petr. 4, 14, 15.

3 Act. 20, 24.

Translated by churchlatin.ai, a product of Boyne Archives

2 and considered.

[*Latin ed. p. 503*]

Apostolic Letters 505, to the most faithful, which we cannot longer tolerate, lest the honor of those people be so defiled by detraction, and the unjust persecution against them continue. Furthermore, we would have passed over this Imperial letter in this place, were it not that, quite unknown to Us and certainly contrary to custom, it was published by the official Berlin gazette, along with another of Our writings, in which We appealed to the justice of the most serene Emperor for the Church *catholica* in Prussia. "These things which We have recounted up to now are placed before all eyes: can it be that, while monks and devout virgins are deprived of their common freedom and are cast out with immense harshness, while public schools, in which *catholica* youth are instructed, are increasingly deprived of the salutary teaching and vigilance of the Church, while sodalities and even seminaries established to foster piety are dissolved, while freedom is taken away from evangelical preaching, while in some parts of the kingdom, the elements of religious instruction are forbidden to be taught in the vernacular language, while parish priests are taken away from their parishes, whom the same Bishops had appointed, while the prelates themselves are deprived of their revenues, are coerced with fines, and are threatened with imprisonment, while Catholics are subjected to every kind of vexation, can it be that We are mistaken in thinking that neither the religion of Jesus Christ nor truth is being invoked in this matter?" "And this is not the end of the injuries inflicted upon the *catholica* Church. For there is also added the open support given by the Prussian and other German Imperial governments to those new heretics, who call themselves "Old Catholics," through such a misuse of a name, which would be utterly ridiculous, were not the monstrous errors of this sect against the principal principles of the *catholica* faith, the sacrileges committed in the divine service and in the administration of the sacraments, the most serious scandals, so great that the destruction of the souls of Christ redeemed with His blood, would rather be expressed by the force of tears, before our eyes." "And what, indeed, do these miserable ones intend and seek to achieve?"

[*Latin ed. p. 504*]

Letters 506. It is clearly evident from the writings of these sons of apostasy, especially from that impious and shameless document which has been widely circulated, a document which they themselves have produced. For they claim jurisdictional power over a pseudo-bishop and, having turned away from the Roman Pontiff and, more recently, from those who are true successors of the blessed Apostles Peter, they have transferred that power to the people, or, as they say, to the community; they reject and attack the infallible teaching, both of the Roman Pontiff and

Translated by churchlatin.ai, a product of Boyne Archives

of the entire Church; and, with incredible audacity, they affirm against the Holy Spirit, which Christ promised would remain in the Church forever, that the Roman Pontiff, and also all the bishops, priests, and people united with him in faith and communion, have fallen into heresy, despite the definitions of the ecumenical Council of Vatican. Therefore, they also deny, blasphemously, the very infallibility which has been fully established in the world, and they claim that the Church, and therefore its visible head in the bishops, has failed. From this, they claim that they are compelled to restore a legitimate episcopate in their pseudo-bishop, who, having ascended not through the door but from elsewhere, like a thief and a robber, turns his own head into the condemnation of Christ. "Woe to these men who undermine the foundations of the Catholic religion, who overturn all its characteristics and properties, who have brought forth so many vile and manifold errors, or rather, have collected from the old dung heap of heretics and presented them in public, and yet they are not ashamed to call themselves Catholics, and even old Catholics, while their doctrine, their novelty, and their number, in every way, deny both the ancient character and the Catholic character. With greater reason does the Church rise up against these, as she once did against Augustine against the Donatists, throughout all the nations spread by Christ, the Son of the Living God, upon which rock the gates of hell shall not prevail, and with which He Himself, to whom all power has been given in heaven and on earth, declared that He would be with them until the consummation of the age. "The Church cries out to her eternal spouse: What is..."

[*Latin ed. p. 505*]

"Letters: 'Why do I hear murmurs against me from those who call themselves 507 Apostolic?' 'What is it that the lost ones claim I have perished?' Tell me: 'The shortness of days,' they announce to me; 'Tell me of My people: how long will I be for those who say, "This age?"' It was, and now it is not; for those who say, "The Scriptures are fulfilled, all nations have believed," but they speak of *all* nations. The Church has apostatized and perished.' And this voice was not without effect. How did it announce itself? 'Behold, I am with you until the consummation of the world,' according to the opinions of this age. Moved by the voices of men, they seek from God that He announce to them the shortness of His days; and they find that the Lord has said: 'Behold, I am with you until the consummation of the age.' 'You say,' they claim, 'that He spoke of us; we are and will be until the consummation of the age.' Christ Himself is questioned: 'And He will say,' it is foretold, 'that this Gospel will be preached throughout the whole world, in witness to all, and then the end will come.' Therefore, until the end of the age, the Church will be among all nations. Let the heretics perish, let them perish in what they are, and let them be found to be what they are not.'

Translated by churchlatin.ai, a product of Boyne Archives

"But these men, having progressed more boldly on the path of iniquity and perdition, and as it is fitting that the sect of heretics should experience the just judgment of God, have also sought to fabricate a hierarchy for themselves, as we have indicated, and they have chosen and appointed a certain Joseph Hubert Reinkens, an apostate from the Catholic faith, as their pseudo-bishop; and in order that nothing of impudence may be lacking, they turned to the Ultraiectenses Janseniists for his consecration, whom they themselves, before they separated from the Church, considered heretics and schismatics, along with the other Catholics. However, that Joseph Hubert dares to call himself a bishop, and, which surpasses belief, as a Catholic bishop, he is recognized and named by the Most Serene Emperor of Germany, and is to be held and observed as a just bishop by all subjects.

"Yet, even the very rudiments of Catholic doctrine declare that no legitimate bishop can be had who is not in the faith and charity."

[*Latin ed. p. 506*]

Lettere 508: Let no one be joined to Peter, upon whom the one Church of Christ is built; who does not adhere to the Supreme Pastor, to whom all the sheep of Christ are entrusted to be fed; who is not subject to the confirmer of the brotherhood which is in the world. And indeed, the Lord spoke to Peter; to him, "that unity might be founded from one"; therefore, to Peter, divine generosity bestowed a "great and wondrous partnership of power," and if He wished to grant anything to others that should be common to the princes, He never granted it "except through him," and what He did not deny to others, He did not grant through him. Hence, from this Apostolic See, where the blessed Peter "lives, presides, and ministers" to those seeking the truth of faith, 3 "all the rights of the venerable communion" flow; and this very "seat is the certain head of the churches spread throughout the world, from which whoever separates himself becomes an exile from the Christian religion, since he has not begun to be "part of the body." 5 Hence, the holy martyr Cyprian, when speaking to the schismatic pseudo-bishop Novatian, denied him the name of Christian, as if he were separated. "Whoever he is, and whatever he may be," he says, "he is not a Christian who is not in the Church of Christ. Let him boast, and let him preach his philosophy or his eloquence with proud voices; if he has not retained 'brotherly love,' he has also lost what he previously had, namely, 'ecclesiastical unity.' Since there is one Church from Christ throughout the world, divided into many members, likewise the episcopate is spread in number, many bishops, in concord, after the tradition of God, after the connection and everywhere united Catholic Church.

[*Latin ed. p. 507*]

Letters 509 Apostolic: "It strives to make the Church human. Therefore, whoever does not observe the unity of spirit, nor the bond of peace, and sep-

Translated by churchlatin.ai, a product of Boyne Archives

arates himself from the bond of the Church and from the college of priests, cannot, by any means, hold office, nor receive honor; he who wished to maintain unity, did not wish for peace." – concerning the episcopate.

1. "We, therefore, who have been appointed in this supreme chair of Peter, for the safeguarding of the Catholic faith and for the unity of the Successors of the Church, to preserve and defend it, following the manner and example of the sacred laws, and having received from Heaven the power entrusted to us, not only declare the election of Joseph Hubert Reinkens, which was made contrary to the sanction of the sacred canons, to be unlawful, void, and utterly null, and his consecration to be sacrilegious; but also we excommunicate and anathematize Joseph Hubert himself, and those who attempted to elect him, and those who assisted in the sacrilegious consecration, and all those who have adhered to them, and have given them aid, favor, assistance, or consent, by the authority of Almighty God, and declare that they are to be separated from the communion of the Church, and are to be considered among those from whose company the Apostle has forbidden all the faithful, so that he has even expressly commanded that they should not say "Hail" to them.

2. "From these things which we have said, Venerable Brothers, it has become sufficiently clear to you how sad and full of danger is the condition of Catholics in those regions of Europe which we have indicated. Nor are things more favorable, nor are the times more peaceful in America, whose regions are so hostile to Catholics, and whose governments seem to deny the Catholic faith which they profess. For there, a few years ago, a most bitter war against the Church, its institutions, and the rights of this Apostolic See, began, as Cyprian wrote against Novatian, epistle 52, to Antonian. II John, verse 10."

[*Latin ed. p. 508*]

Letters 510, Apostolic. These matters, if we were to pursue them, would require extensive discussion; but, since they cannot be fully addressed in passing due to their gravity, we shall address them more fully at a later time. "Perhaps some among you, Venerable Brothers, may wonder why such a widespread war is being waged against Catholic studies. But anyone who has truly known the nature of sects, whether they are called Masonic or by any other name, and who understands the reason, method, and scope of this conspiracy, by which the Church is attacked almost everywhere on earth, will not hesitate to conclude that the present calamity is primarily due to the deceptions and machinations of these very sects. For from them arises the synagogue of Satan, which brings forth forces against the Church of Christ, gives signs, and lends its hand. Our predecessors, from the very beginning, have denounced these things to the watchmen of Israel, to kings and to nations, and have repeatedly condemned them; nor have we ourselves failed in this duty. Would that the supreme pastors of the

Translated by churchlatin.ai, a product of Boyne Archives

Church had been given greater faith by those who could have averted this so harmful plague! But, through tortuous and hidden paths, with unceasing activity, and with many deceptions, they have deceived many, and have now come to the point where they have burst forth from their hiding places, and now boast of being powerful and dominant. The infamous gatherings believe that their numbers have grown so much that they have already achieved their goals and are about to reach their ultimate objective. Having achieved this, they boldly turn their forces and their defenses, which they have accumulated over a long time, against those places where they have held positions of power, in order to enslave the Church of God with the harshest servitude, to undermine its foundations, to attempt to corrupt its divine attributes, and, if possible, to utterly destroy it by repeated blows. Given these circumstances, Venerable Brothers, use every effort to defend against the intrigues of these sects, and against those who have falsely given their care to the faithful, to these very sects, in order to..."

[*Latin ed. p. 509*]

Apostolic Letters 511 concerning the retraction of [erroneous] statements. Moreover, especially to those who still fear that the deceitful [secret] societies, whether they have publicly asserted or are secretly promoting, do not merely consider the exercise of mutual benefit and progress, but are influenced by these tenebricosis [dark] gatherings. Explain to them often, and deeply impress upon their minds the Pontifical constitutions concerning this matter, those Masonic groups which are perceived by some, not those instituted in Europa, but all those found in America and other parts of the world. "Furthermore, Venerable Brothers, since we live in times in which much suffering is endured, but also an opportunity to merit, let us, as good soldiers of Christ, above all, take care not to lose heart, but rather, having found certain hope of future tranquility in the very storm in which we are tossed, let us, confident in divine help and spurred on by that most noble exhortation of Chrysostom, raise ourselves and the working clergy and the people: 'Many waves surge, and grievous storms; but we fear not to be overwhelmed, for we stand upon a rock. Let the sea rage, it cannot dissolve the rock; let the waves rise, they cannot sink the ship of the Church; the Church is stronger than heaven itself. 'Heaven and earth shall pass away, but my words shall not pass away.' These words? 'You are Peter, and upon this rock I will build my Church, and the gates of hell shall not prevail against it.' If you do not believe the words, believe the facts. How many tyrants have attempted to oppress the Church! How many snares, how many furnaces, how many teeth of wild beasts, how many sharp swords! And yet, they have accomplished nothing. Where are those enemies? They have been handed over to silence and oblivion. Where is the Church? It shines more brightly than their sun. Where they were, they are extinct; what belongs to it, is

Translated by churchlatin.ai, a product of Boyne Archives

immortal. If, when there were few Christians, they were not conquered; how much more, when the whole world is filled with pious religion, how can they conquer them? 'Heaven and earth shall pass away, but my words shall not pass away.'" 1 Homily, before exile, n. 1 and 2. 1

[*Latin ed. p. 510*]

512 Letters. Therefore, let us strive, with no one remaining indifferent to the dangers affecting the Apostolic See, and let us persevere in prayer, so that all may strive to appease the heavenly wrath provoked by the sins of men, that the Almighty may, in His mercy, arise and command the winds, and bring about tranquility. "Meanwhile, We impart the Apostolic Benediction, a testament to Our most profound benevolence, to you all, Venerable Brothers, and to the clergy and the entire people, entrusting each to the care of their respective pastors. "Given at Rome, near St. Peter, on the twenty-first day of November, in the year of Our Lord 1873, in the twenty-eighth year of Our Pontificate." PIUS PP. IX. By which, the special ecclesiastical jurisdiction in the territories pertaining to the four military orders of St. James, Alcantara, Calatrava, and Montesia in Spain, is abolished; and the same territories are incorporated into the neighboring dioceses. PIUS, SERVANT OF THE SERVANTS OF GOD, FOR THE PERPETUAL MEMORIAL OF THE MATTER. "The more serious the evils become and the more urgent they are, the more readily it has been demonstrated that remedies must be sought; and indeed, the recent wounds inflicted upon the Church in Spain, and the anxieties and disturbances thereby aroused among the faithful, now urgently demand the ministry of Our supreme office. In the Convention, which We held concerning the affairs of the religious orders of Spain,..."

[*Latin ed. p. 511*]

Letters 513 from the Apostolic See, dated September 5, 1851, addressed to the Government of that nation, concern matters that, among other things, affect the detriment of ecclesiastical institutions, stemming from the "dispersion of the four Military Orders of Saint James, belonging to Montesa, Alcantara, Calatrava, and others," and we have decided to consider the territories belonging to these Orders, in view of the new division of dioceses that is being established in that region. However, since the ecclesiastical administration has ceased, at least temporarily, in the territories of these Military Orders due to recent laws, We are compelled to address this urgent need without delay, lest it completely fail. "Indeed, these Military Orders, distinct in their origin, antiquity, and form, have always been concerned with the propagation of the Christian faith, the protection of its name, and the defense and liberation of Spain from the yoke of the infidels, and have rightfully earned the splendor of the kingdom. How often has Spain owed its peace, tranquility, and prosperity to these illus-

Translated by churchlatin.ai, a product of Boyne Archives

trious Orders, which were later transformed into Regular Orders, and to their valiant members! They have been the support of their kings, and the bulwark against the destructive domination of the infidels." Therefore, the Roman Pontiffs, always attentive to the progress of the Christian religion and the welfare of the nation, have favored these Orders with numerous and special privileges. Moreover, the Kings of Spain have endowed them with extensive territories, which, at the request of those same Kings, this Holy See has exempted from the jurisdiction of the Ordinaries, entrusting them to the Supreme Masters of each Order, who, for this reason, exercised both ecclesiastical and civil jurisdiction there. "Furthermore, this Holy See, in response to the demands of public utility and the times, transferred the administration of the Supreme Magistracy to Castile; until the time given by Hadrian V, in Act, vol. VII, page 81, when, through the Emperor Charles V, in perpetual union with the Holy Legion, it was joined to the throne."

[*Latin ed. p. 512*]

Letters 514 from the Apostolic Palace and Leon, by Bull, dated May 5, 1521, state that, from that time forward, the Kings of Spain exercised ecclesiastical administration in those territories through a special tribunal composed of members of various Orders and known as the Military Orders. However, in the year 1851, as we have said, when a decision was made regarding the organization of religious matters, and considering the condition of ecclesiastical jurisdiction in these territories, which extended throughout the entire Kingdom of Spain and pertained to the aforementioned Orders, it seemed fitting that, when a new division of dioceses was to be implemented, these territories should be incorporated into neighboring dioceses. But so that the memory of "that Institute, which has contributed so much to the Church and to the state," would not be erased, and so that a noble monument of its glory would be preserved for the nation, it was decided that "a certain number of places within a defined area, forming a closed circle, should be designated, within which the aforementioned Grand Master of the Military Orders would continue to exercise ecclesiastical jurisdiction for the proper governance of those matters, as prescribed in Pontifical constitutions." While awaiting the opportunity to complete this matter, the Government of Spain, at its discretion, suppressed the aforementioned four Orders, and consequently, that special tribunal which exercised ecclesiastical administration within their territories; and thus, it completely removed from existence another of the most illustrious institutions of Spain, depriving those territories of all ecclesiastical governance. This compelled Us to immediately consider the situation of so many faithful who were left destitute. Since, with the suppression of these Military Orders, any provision for adding new territories to them was temporarily excluded, We, concerned for the salvation of souls, had no alternative but, according to the agreements made, to join the aforementioned territories

Translated by churchlatin.ai, a product of Boyne Archives

to neighboring dioceses, and to subject them to the jurisdiction of their respective Bishops.

[*Latin ed. p. 513*]

Apostolic Letters: "And since the gravity of the evil does not permit this remedy to be delayed, We, after careful deliberation with Our Most Reverend and Venerable Brothers, the Cardinals, and with some of Our beloved sons, the prelates of the Roman Curia, by Our own initiative, with full knowledge and exercising the fullness of Our Apostolic authority, decree, through these Letters, the suppression and abolition of the ecclesiastical jurisdiction over the territories pertaining to the aforementioned Military Orders, together with all indulgences, privileges, and faculties, even those contained in Apostolic Letters and specifically mentioned, and We hereby remove, extinguish, annul, and abolish them completely, and We command that they be entirely suppressed and abolished by all.

"Furthermore, by the same Apostolic authority, We join, aggregate, and incorporate all and each of the territories and places of the aforementioned Military Orders, insofar as they pertain to them in any way, according to Article 9 of the aforementioned Convention, to the neighboring dioceses: namely, the territories or places pertaining to them which are entirely enclosed within the boundaries of a particular diocese, We aggregate and incorporate to that same diocese. Those which are contiguous to one or more dioceses, in the former case We aggregate and incorporate to the nearest diocese, whether we are speaking of territories or of separate places pertaining to them; in the latter case, We aggregate and incorporate to that diocese whose cathedral church is closer. Therefore, We entrust and subject to the governance and administration of the Bishops for the time being residing in those dioceses, all cities, towns, villages, and their inhabitants, and any churches, whether collegiate, parochial, or chapels, oratories, pious institutions of any kind or name, ecclesiastical benefices, or chaplaincies, if any exist, as well as monasteries of holy virgins, whether of ordinary or specially delegated jurisdiction by law or by the Apostolic See: so that these sacred prelates in those territories will exercise all and each..."

[*Latin ed. p. 514*]

The Apostolic See possesses both ordinary and extraordinary faculties, as well as, as mentioned above, delegated powers, to exercise them in the same manner as they are exercised in their own dioceses. "However, so that no monument necessary and useful to the Church may be lost or destroyed on account of this aggregation, we command and decree that all instruments, whether books, wills for pious causes, or any writings concerning persons, matters, rights, and reasons pertaining to the ecclesiastical order within the incorporated territories, be diligently sought out and collected, and transferred to the chancery of the respective Ordinaries to whom these

Translated by churchlatin.ai, a product of Boyne Archives

territories are subject, for the preservation of their memory and for the benefit of posterity. "Furthermore, we declare explicitly that the aggregation and incorporation of the territories of the four Military Orders, decreed by these Our Letters to the neighboring dioceses, will in no way impede either the circumscription of the new dioceses, or the particular constitution of the territory within the Convention, should either or both, due to a change in circumstances, be deemed necessary. To accomplish these things in this case, as well as to establish them, according to the aforementioned agreements, we expressly reserve all rights of the Titular Bishop in the parts of the infidels, to whom the ecclesiastical jurisdiction of that territory is entrusted, to this Holy See. "Moreover, that all that has been disposed of by Us, as mentioned above, may be brought to a happy and speedy conclusion, we nominate, constitute, and appoint Our beloved son, John, Priest, Cardinal, Archbishop of Vallisoletanum, Moreno, of whose prudence, doctrine, and integrity we have the greatest confidence in the Lord, as the executor of the present Letters; and we grant him all and singular the necessary and appropriate faculties to carry out all that has been ordered above, and to establish it, freely and lawfully, using the Apostolic authority delegated to him; and we also grant him the power to fully attend to all matters, especially in places near his residence.

[*Latin ed. p. 515*]

517. We desire that the Apostolic Letters delegate the execution of one or more persons constituted in ecclesiastical dignity, and that both he himself, and the persons delegated by him, may freely and lawfully acknowledge and definitively pronounce, regarding any opposition that may perhaps arise in the execution of such a matter. Furthermore, We wish that the Executor of these Letters be obliged to transmit to the Sacred Congregation for Consistorial Affairs, which is entrusted with such matters, within four months from the reception of these Letters, if it can be done, authenticated copies in proper form of all and each act to be completed in the execution of these Letters, to be preserved in the archives of that Congregation. "These things We wish, We decree, We command, and We order, declaring that these present Letters, and all that is contained in them, and all decrees whatsoever, shall never, at any time, be subject to any defect of invalidity, suppression, or nullity, for any reason whatsoever, even the most privileged, or by custom, even if long-forgotten, or by any other reason, even within the body of the law, by anyone of any condition and dignity, even a royal or imperial notary, be impugned, or otherwise infringed, suspended, limited, or called into question, but shall always exist and be firm, valid, and effective, notwithstanding Apostolic, general, or special constitutions and ordinances, and Our own and the Apostolic Chancery regulations, especially without prejudice to the law in question, and all other contrary things, even those worthy of special mention. With all and each of these

Translated by churchlatin.ai, a product of Boyne Archives

things held in mind for the express and literal insertion, We derogate from them, otherwise remaining in their full force, solely for the purpose of achieving the effect of the foregoing. Furthermore, We wish that, upon the presentation of these Letters, even in printed form, but signed by the hand of a public Notary and sealed with the seal of a person constituted in ecclesiastical dignity, the same full faith be given to them everywhere, as would be given to them if they were exhibited or shown. Therefore, to no one whatsoever shall it be permitted to invalidate, abolish, rescind, annul, delete,

[*Latin ed. p. 516*]

Letters 518 concerning the revocation of Apostolic privileges, the abrogation of mandates, interdictions, declarations, and the infringement of wills, or the audacious contradiction thereof. If anyone should presume to attempt this, let them know that they will incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul. "Given at Rome, near Saint Peter, in the year of the Incarnation of the Lord, one thousand eight hundred and seventy-three, on the eve of the Ides of July, in the twenty-eighth year of Our Pontificate." By these, all privileged ecclesiastical jurisdictions in Hispania, and the territories theretofore subject to them, are joined to the neighboring dioceses. PIUS, SERVANT OF THE SERVANTS OF GOD, FOR PERPETUAL REMEMBRANCE TO THE BISHOPS. "Since the diverse nature of civil society and diverse laws once granted privileges for the benefit of the faithful and the glory of the Church; these, due to the changing course of time and customs, have become not only inopportune but often harmful. Hence, the impediments to the free and expeditious exercise of ecclesiastical jurisdiction, the frequent offenses between the ordinary jurisdiction and the exempt jurisdiction, and other such inconveniences, and the resulting disruption of discipline, scandal, and neglect of the faithful, have clearly demonstrated the necessity of abolishing any privileged jurisdiction in Hispania; and it has been deemed an opportune occasion for accomplishing this, as a new measure is proposed."

[*Latin ed. p. 517*]

Letters concerning dioceses within the Apostolic jurisdiction. Indeed, the unexpected suppression of the four Military Orders of Saint James, Alcantara, Calatrava, and Montesia, recently carried out by the Spanish Government, compelled Us to immediately consult with the Catholic inhabitants of the territories pertaining to those Orders, deprived of all ecclesiastical administration by such a suppression; and We have done so through Apostolic Letters, which We issue this very day, ordering the execution of the agreements reached with the Spanish Government on September 5th of the year 1851. Furthermore, it was decided in that Agreement that all privileged jurisdictions should be addressed in the same manner and at the

Translated by churchlatin.ai, a product of Boyne Archives

same time; for it seemed prudent to suppress some jurisdictions in certain places, while in others it would be dangerous (article 1, which states: "All privileged jurisdictions, of whatever kind they may be and whatever they may be called, shall be entirely abolished, including those pertaining to the Order of Saint John of Jerusalem."). However, the territories belonging to these jurisdictions shall be added to their own dioceses, or to neighboring dioceses, in the new arrangement, as stipulated in article seven; provided that the following, which pertain to them, shall remain in force and be maintained:

1. The Major Chaplain of Her Catholic Majesty.

2. The General Vicar of the Military District.

3. The four Military Commanders of Saint James, Calatrava, Alcantara, and Montesia, in accordance with what is stipulated in article nine of this Agreement (that is, with regard to establishing a new territory for them).

4. Regular Prelates.

5. The Apostolic Nuncio for the time being, concerning the Church and Italian Hospice established in this very city (Madrid).

Furthermore, the following special provisions shall remain in force:

"Regarding the General Cross, the powers granted to the Commissary responsible for these matters shall remain in effect, in accordance with the delegation letters and other Apostolic concessions."

[*Latin ed. p. 518*]

Letters 520. We, therefore, adhering to the spirit and purpose of the Convention, in which it was deemed necessary that the evil daily increasing should be removed from the entire Nation at the same time, and having been compelled to remove all delays in applying the remedy to the four Military Orders, we consider it entirely fitting to apply the same remedy to other parts of Spain also suffering from the same affliction. Wherefore, after careful deliberation with the Most Reverend Fathers, Cardinals, and also with certain esteemed sons of the Roman Curia, by our own initiative, with full certainty, and by the fullness of our Apostolic power, by these Letters we decree and order the already agreed upon and established suppression and abolition of all jurisdictions and privileges of whatever kind, whatever their name or designation, not excluding those pertaining to the Order of St. John of Jerusalem, or to any monastery of monks or nuns of whatever name and institution, even those endowed with extraordinary and special privileges granted by the Apostolic See to secular prelates, or those immediately subject to the Holy See, or those who, together with their own church and clergy and administrators, are exempt from the jurisdiction of the Bishop, or those who exercise an exempt jurisdiction over the clergy and people of a city or locality within a certain area, or finally, those who possess and are called "Prelates Nullius" with their own and separate ordinary

Translated by churchlatin.ai, a product of Boyne Archives

jurisdiction, together with all indulgences, privileges, and faculties, even those contained in Apostolic Letters and specially designated therein; and in fact, we remove, extinguish, annul, and abolish them, and we decree that they shall be completely suppressed and abolished from all. Except, that is, for those jurisdictions which have been specifically designated in the following article of the aforementioned Convention. "Therefore, by the same Apostolic authority, we abolish all and each of the aforementioned privileged territories, according to article i."

[*Latin ed. p. 519*]

The Apostolic Letters 521, concerning the aforementioned Convention, or places pertaining to it, which are entirely enclosed within the boundaries of a certain diocese, we aggregate and incorporate into that same diocese. Those, however, which are contiguous to one or more dioceses, in the former case, we aggregate and incorporate into the diocese that is nearest; whether concerning territories, or concerning separate places pertaining to them; in the latter case, we aggregate and incorporate them into that diocese which has the nearest cathedral church. Therefore, each city, town, village which exists within the aforementioned territories, and their inhabitants, and any churches, whether collegiate, parochial, or dependent, oratories, pious foundations of any kind and name, ecclesiastical benefices, or chaplaincies, if any exist, as well as monasteries of holy virgins, whether of ordinary or specially delegated jurisdiction, we entrust and subject to the governance and administration of the Bishops who are for the time being seated in those dioceses, within which the aforementioned territories or separate places pertaining to them are aggregated and incorporated, by virtue of the present Apostolic Letters: so that those sacred prelates may exercise all and singular faculties, both ordinary and extraordinary, and also, as mentioned above, delegated ones, within those territories, just as they exercise them within their own dioceses. "Lest, however, that on account of this aggregation, any monument necessary or opportune for the ecclesiastical order should be lost or perish, we wish and command that all instruments, or books, or testaments pertaining to pious causes, or indeed anything written concerning persons, things, rights, and reasons pertaining to ecclesiastical matters existing within the incorporated territories, be diligently sought out and collected and transferred to the chancery of each Bishop to whom those territories are subject, to be preserved for perpetual memory and the benefit of posterity. "Furthermore, we declare expressly that what has been established and decreed by these Our Letters is in no way to impede the future circumscription of dioceses, whenever it may be necessary. "Moreover, that all things disposed by Us, as mentioned above,

Translated by churchlatin.ai, a product of Boyne Archives

may be duly and happily carried out,..."

[*Latin ed. p. 520*]

Let these Letters be expedited and brought to the desired outcome with all due haste. We name, constitute, and appoint Our beloved Son, John Ignatius, Priest of the Most Holy Roman Church, Cardinal, Archbishop of Morelia, a man of prudence and doctrine, and of the highest integrity, in whom we place great trust, as the executor of the present Letters. We grant him all and singular the necessary and appropriate powers to carry out all that is mentioned above, so that, for the sake of speed, he may freely and lawfully perform and establish all that has been delegated to him by Apostolic authority; and we grant him the power to delegate one or more persons of ecclesiastical standing to assist in the full execution of all matters, especially in places distant from his residence, and that he, as well as the person or persons so delegated by him, may freely and lawfully recognize and definitively pronounce on any opposition that may arise in the course of the execution of this matter, in any way whatsoever.

Furthermore, We wish that the executor of these Letters be obligated to transmit, within four months from the receipt of these Letters, if possible, authenticated copies of all and singular acts performed in the execution of these Letters to the Sacred Congregation for Consistorial Affairs, to be preserved in the archives of that Congregation.

These things We wish, We decree, We establish, We command, and these present Letters, and all the contents and decrees contained therein, shall never be subject to any objection, invalidation, or nullification, for any reason whatsoever, even by the most privileged, or by custom, even if long forgotten, or by any other head, of whatever condition and dignity, even a royal or imperial notary, but shall always remain firm, valid, and effective, notwithstanding any general or special constitutions.

[*Latin ed. p. 521*]

Apostolic Letters 523, concerning ordinations, and Our own regulations, and those of the Apostolic Chancery, especially regarding matters of law which are not to be waived, and other matters worthy of special mention, contrary to anything whatsoever. We expressly and verbatim include all of these and each of them, so that they remain in full force, derogating solely and expressly from the aforementioned, only to the extent specified. Furthermore, We wish that the present Letters, even when transcribed and printed, but signed by the hand of a public Notary and sealed with the seal of a person constituted in ecclesiastical dignity, should everywhere be given the same full faith as would be given to them if they were presented or shown. "Therefore, to no one whatsoever is it permitted to infringe this page of Our Letters, to abolish, rescind, annul, delete, revoke, abrogate, contravene, declare invalid, or otherwise violate Our will. If anyone should pre-

Translated by churchlatin.ai, a product of Boyne Archives

sume to attempt this, let him know that he will incur the wrath of Almighty God, and of the Blessed Apostles Peter and Paul. " Given in Rome, at St. Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and seventy-three, in the twenty-eighth year of Our Pontificate, on the eve of the Ides of July. FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT, OF MARRIAGE. January 25, 1873. Summary of the case. In America, in the year 1858, on February 15, before his own Parish Priest, the marriage was duly celebrated between Ludovicus, of Spanish nationality, and Carmela, a native. Five months later, the aforementioned spouses lived together.

[*Latin ed. p. 522*]

In case 524, a declaration of the nullity of the marriage was requested by the Ordinary, because the marriage could not be consummated due to the wife's strictness. To prove this, they presented two testimonies from skilled female surgeons, of whom one stated that the impediment was natural and pre-existing, and the other testified absolutely that the impediment was due to an infirmity or a morbid affection, but refused to judge whether this infirmity preceded or followed the marriage; however, he declared the wife's absolute impotence. The ecclesiastical judge, initiating the process, appointed a defender of the marriage, but almost everything was neglected that should be done in such cases, as prescribed by the Benedictine Constitution and the Instruction of the Holy Congregation of 1840. For, as some indicate, the Defender did not swear to faithfully and diligently fulfill his duties; neither spouse was called to examination; the testimony of relatives was overlooked, which was heard second-hand; he did not attend any of the process acts, nor did he deliver sealed and signed interrogatories; and what is worse, he himself urged the judge to declare the marriage null, whereas, conversely, the Defender should always uphold the validity of the marriage, and it is incumbent upon the Procurator, or those who request a solution, to urge for a sentence of nullity; finally, after obtaining the sentence of nullity, he did not appeal in any way so that the cause might be judged in a second instance. Therefore, in some way, the process was initiated, and the care of the appointed defender of the marriage was entrusted to a judicial expert in the medical arts, who, after a physical examination of the spouses, would give testimony; however, the spouses refused this doctor, and another was chosen with the consent of the spouses, who, having fulfilled his assigned duty, also testified to the wife's extraordinary strictness, from which he argued that she would never be able to consummate the marriage; and if the woman were to undergo a surgical operation, he said, besides the fact that the success of the operation

Translated by churchlatin.ai, a product of Boyne Archives

would be very doubtful, she would always remain impotent.

[*Latin ed. p. 523*]

525. Finally, three experts were summoned by the ecclesiastical judge, to whom these questions were proposed: "1) Whether the impotence of Carmela, according to their judgment, is the result of a natural constitution, or whether it stems from an external cause or an accidental occurrence; 2) Whether, in this last hypothesis, they believe that the marriage preceded the impotence; 3) Whether they believe that said impotence is relative only to Ludovicus, or absolute with respect to all with whom she might marry." Under oath, they responded as follows: The first replied that the impotence is the result of a natural constitution and not of an accidental cause; he stated that the impotence did not occur before the marriage, but rather after, since it consists in an organic conformation; and he considered it to be absolute, so that the woman is impotent with anyone. The second surgeon, with some hesitation and doubt, responded regarding the two previous questions; but he affirmed that the impotence is actually absolute. The third judicial expert replied that the impotence of Carmela is not a defect of the physical constitution, but rather an affliction of a scirrhous nature; he considered that this affliction preceded the marriage; and that, in the present state, Carmela is impotent with anyone. Meanwhile, while the case was being considered, Ludovicus returned to Spain, having appointed Michael as his procurator to pursue the case. Therefore, the ecclesiastical judge, having heard the defender of the marriage, who sought to oppose the decree of nullity, and having considered the testimonies of the three experts, issued a sentence, supporting the decree for the following reasons: the impediment of the woman, that is, the impotence, according to the declarations of the experts, is absolute and perpetual, so that it cannot be overcome by anyone, nor even by a surgical operation, which also carries the risk of death.

[*Latin ed. p. 524*]

7. 526. The marriage was a matter for the woman: moreover, it was established by the testimonies of the same three experts that, furthermore, Ludovicus had declared his impotence, and that therefore no contract existed between Ludovicus and Carmela, and that Ludovicus was of no value; that Carmela had preceded him in desiring to enter into the marriage; and that Ludovicus was incapable, due to his physical impediment. However, six years and more had elapsed since the sentence declaring the nullity, which remained unappealed; after the death of the Bishop who had pronounced the sentence, the same ecclesiastical tribunal was approached by Michael, who had acted as procurator, as I said, for Ludovicus; and this man, not fearing his own disgrace, requested that Carmela be declared capable of marriage. For he stated that, in the year 1864, when Carmela was suffering

Translated by churchlatin.ai, a product of Boyne Archives

from a typhus fever, the impediment that had previously prevented the marriage had ceased. But since this happened through an extraordinary event, the marriage with Ludovicus, which had been declared null, could not be revived; indeed, even in this state, in which Carmela was found to be capable, the impediment relative to Ludovicus remained. He therefore requested to enter into marriage with Carmela, with whom he had, not long after the declaration of the nullity of the marriage, had intercourse, although without any effect. Furthermore, he presented the testimony of two physicians, namely, the very same who had previously testified to the physical impediment; for one of them had died; and these, having been compelled by the ecclesiastical judge, under oath, stated that, after a further examination, they had found Carmela's organic condition to have changed greatly, so that the impediment had disappeared, testifying that this could have occurred due to the typhus, although this was to be considered a completely extraordinary effect, as confirmed by another physician who had treated Carmela during that illness. Furthermore, they affirmed that Michael's constitution was much stronger than that of Ludovicus. Finally, the Judge, after examining the records and considering the statements and the testimonies of the two physicians, made an observation, first...

[*Latin ed. p. 525*]

The marriage remained null, as stated in Matrimonii 527, because there was no impediment that had been removed by a wholly extraordinary means, and furthermore, Lewis suffered from relative impotence; the woman declared herself capable and free to contract marriage with Michael, derogating from that part of the first sentence pronounced in the year 1858. By virtue of this sentence, the new marriage was celebrated, although a sentence declaring the marriage null was necessary for contracting marriage according to the Benedictine Double Constitution, Dei miseratione. When the Archbishop learned of this, he immediately implored the Most Holy Father to deign, through his clemency, to offer relief to those who were burdened by the injustice of the judgment, namely, the man of the first marriage, the spouses, the Ordinary, and finally, those who desired to receive the sacred orders; he implored him to do so in such a way that, through Apostolic sanction, everything could be made firm in both forums, with the correction of the acts, and so that, at least as a precaution, an Apostolic dispensation might be granted to the first marriage, certainly only ratified, and not consummated, for the sake of the second marriage. A case of this kind, transmitted to the Most Holy See with an authentic copy of all the acts, for example, a case of economic nature, that is, without a judicial form, was presented by the vote of both the Theologians and the Canonists, and by observations made ex officio by the Defender of the Marriage. It was presented through a formula of doubt, which is found at the end. A synoptic discussion. The vote of the

Translated by churchlatin.ai, a product of Boyne Archives

Canonists. I will refer only to the most important points that the Canonist discussed in his vote. The Canonist, therefore, proposed to himself the question of whether the first marriage should be considered valid or not; then, whether it was only ratified; and finally, if it was only ratified, whether there were grounds for a dispensation.

[*Latin ed. p. 526*]

528. Firstly, according to the common doctrine transmitted by the authors, when impotence dissolves a marriage, and having admitted impotence as a principle, whether it be perpetual or absolute or relative, arising from any cause, if it existed before the marriage, it dissolves the marriage, or renders it null from the beginning; such impotence, it is said, can be proven by the confession of both husband and wife, according to what is stated by Mascard, n. 1: de Probatione, vol. 2, conc. 887, "It is proven by the confession of the husband and wife after they have persevered for two months, attempting carnal copulation, and yet the husband has not been able to consummate the marriage, thus, by common understanding, whether it be due to frigidity, or malice, etc." Furthermore, the authors cite from Porro, lib. 1, cap. 1, in the section on the first judgment, that for almost four months, even though they have made an effort, they have never become one flesh. It cannot be said that the spouses affirmed this in order to have children declared illegitimate; especially since the husband has no other marriage in mind, but rather has requested admission to the priesthood, in order to devote himself solely to God, abandoning worldly concerns. Moreover, these affirmations have been confirmed by sworn testimonies of doctors, who all agreed that the woman was completely impotent to perform the duties of marriage. However, when one of the doctors doubted whether the impotence preceded or followed the marriage, the canonist dispelled that doubt, both through other testimonies and through the nature of things, concluding with Reiffenstuel, lib. 4 Decret., tit. 13, "Indeed, if the impotence is perpetual, whether it preceded the marriage, or is presumed to be an intrinsic frigidity," already n. 28: "But if there is doubt as to whether it occurred before or after the contract, if it is a natural impotence." This is in agreement with Cosci, de separation, lib. 13, n. 28; Sánchez, de matrim., lib. 7, disp. 103, n. 5. And more closely to the matter, Cosci, lib. 1, cap. 13, n. 37: "But if such an impediment exists, that no remedy can be found through medical arts..."

[*Latin ed. p. 527*]

529. Matrimonies "may be remedied by human means, or a marriage may be prevented from being contracted, and a marriage already contracted may be dissolved, can. Consuluisti 20, "caus. 2, n. 5, can. 1 and 2, caus. 33, n. 1; cap. Ex litteris, "3, de frigid., D. Thomas, j, par. de sacr., n. 8, art. 1". Also, Sperelli, dec. 41, n. 3 and 12: "If it appears from the woman's

Translated by churchlatin.ai, a product of Boyne Archives

appearance whether she is a virgin, or if this results from her constitution; again, whether her constitution is evident and cannot be removed, in which case the marriage can immediately be dissolved: because the impediment is perpetual and thus from the beginning invalidates the marriage." However, the Canonist presented a very serious difficulty, namely that the woman had become pregnant six months after marriage with Michael: and it could not easily be admitted that this had happened through an extraordinary event caused by a fever. For, whether a fever could have made the woman pregnant, the doctors themselves were seen to doubt, admitting that they could not judge whether, before such an illness, Carmela had become pregnant through intercourse with Michael. Indeed, a hearing from the medical profession in Rome testified that there was no example in medical practice, that with the described event, as if it came from a fever, it would be supported, nor could any reason be derived from medicine to support it, according to what is narrated about Carmela's vitiated constitution: but he was convinced that either the woman did not have all the physical defects that the doctors had described; or, having admitted these defects, Carmela was not entirely due to the illness. These matters having been established, with another man, from the doctrine of frigidity and malice, is the first marriage. Regarding this trial, dist. 36, qu. The Canonist, when finally found to be competent, noted that the canonical Fraternities had ceased to write, can. 1, art. 2, cap. Laudabiliter, and that to reintegrate S. Thomas in 4 sen"Therefore, if the Church finds itself deceived by the fact that he in whom there was an impediment, has had carnal intercourse with another, the previous marriage is reintegrated and dissolved, according to Acta, tom. VII, fase. LXXXI. 34.

[*Latin ed. p. 528*]

530. Nevertheless, the Canonist considered this grave difficulty, namely, that if the impotence is natural, antecedent, and perpetual in relation to marriage, the individual, according to the text in chapter [omitted], of the Fraternity, should not be reintegrated into marriage. The Glossa states: "If the former husband is unable to consummate the marriage without grave danger, it is permissible, even if, after the fact, she has been given to the second husband according to custom, to return her to the first husband; which can rightly be conceded, because there was no marriage between them." Also, in c. 4, q. i, cause 32, a distinction is made between an impediment that can arise and an impediment that arises from malice; a natural impediment that can be overcome, and one that cannot be overcome. Regarding the latter impediment, the Canon states: "If it cannot be healed, they can be separated; but after they have sought other marriages, while those to whom they were joined are still living, they cannot be reconciled, even if the ability to have intercourse is restored to them." Therefore, if Carmela subsequently proves to be capable of marriage, it cannot be said

Translated by churchlatin.ai, a product of Boyne Archives

that there was no impediment, says the Canonist, because, indeed, Michael, the first husband, was told by the doctors that the woman was impotent with anyone, in which they were deceived; but they truly said that she was relatively and perpetually impotent with Lewis. Now, a relative and perpetual impotence dissolves marriage, as is argued from the treatise on frigidity, from the aforementioned chapter. In it, Innocent III responded to a similar case, stating that the woman should return to her first husband, with these words: "We have carefully considered that the impediment was not perpetual, and that, without a corporal peril, it could be removed by human means, except for a divine miracle; therefore, we know that the sentence of divorce (that is, the nullity of the first marriage) was pronounced through error, even if it was a probable error, since it is clear from the subsequent fact that she was capable of intercourse with him, to whom she was joined." That is to say, the second husband was similar to the first husband; therefore, if he had been dissimilar in age, strength, and other respects, the first marriage would not be reintegrated.

[*Latin ed. p. 529*]

531. Marriages. Furthermore, the Canonist demonstrated that the physical constitution of Michael was very different from that of Lewis, and he proved this with the testimonies of doctors, given in the second court session, in which this difference was strongly emphasized, and Michael's virility was noted. However, if the first marriage were to be considered valid, the Canonist argued that the second marriage remained, and therefore the question could only be resolved by a dispensation from the Holy See, which would render the second marriage valid, and not merely dissolve the first. He demonstrated that the second marriage remained valid based on the aforementioned circumstances, both preceding, concurrent, and subsequent. For, as the spouses stated in the first petition, and as confirmed by the two expert testimonies, and subsequently by a third judicial doctor, as we have said, it could not be presumed that the marriage had been consummated during the course of the proceedings, which were concluded within approximately four months; moreover, the third expert confirmed two extrajudicial testimonies, and Lewis departed for Spain, his homeland, before concluding the proceedings, and never returned. Finally, these same experts, upon a second examination of Carmel, stated that she could not have consummated the marriage with Lewis. With these facts established, the Canonist presented two examples in support of granting a dispensation in such cases, the first being from Oriolen, in the year 1711. In this case, since the marriage had been legally dissolved due to the woman's frigidity, the man contracted another marriage; the woman, however, gave herself to a more vigorous man, and, having overcome the impediment, sought to enter into marriage with him. The case was examined, and whether the woman should be returned to her first husband, Clei, was considered;

Translated by churchlatin.ai, a product of Boyne Archives

in this matter, the Holy See, through a dispensation concerning the first marriage, which had only been declared valid, intervened. A similar case was examined in Massanen, in the Sacred Congregation on January 24, 1778, and April 7, 1779; for it had been declared...

[*Latin ed. p. 530*]

Of Marriages, 532: No marriage is nullified because of a woman's impediment; but if a man has entered into a perpetual marriage with another woman, and has thus bound himself, he has, in some cases, been released. The question arose whether the first marriage should be restored, through a dispensation concerning the first marriage, which, if valid, would remain so; but this question was set aside. Furthermore, arguing that it is a matter of granting a dispensation concerning a valid marriage, and therefore concerning Pontifical grace, the Canonist maintained that judicial forms and proofs are not necessarily required, but that extrajudicial proofs and supplementary evidence, through grave indications and conjectures, are sufficient, so that, when considered together, they may move the Judge to judge that the marriage has not been consummated. The Canonist confirmed this from the custom of the Sacred Congregations, which, considering all the evidence together, whether judicial or extrajudicial, give their opinion to the Roman Pontiff concerning the dispensation of marriage. He also cited some examples of such dispensations, including that of Alexander VII, who granted a dispensation for the marriage between the Prince of Lotharingia-Nemours and Charles, without requiring strict judicial proof, and delegated the same dispensation to the Bishops with these words: "By these presents, we entrust and command that, after jointly proceeding, once it has become clear to you, from information obtained extrajudicially, that the aforementioned marriage, etc., has been consummated carnally, you, without our authority, grant the dispensation, etc." Furthermore, although the Constitution does not require the testimony of an honest woman or the oath of the spouses, as required by /4 of the Decretals, title 15, number, "although they should be regularly used for examining a woman," Benedictine Rule 41 states: "Concerning women: but if the question is about some higher quality, or some knowledge concerning women, e.g., whether a woman is circumcised and can be made fit for intercourse without danger of life."

[*Latin ed. p. 531*]

533. Concerning Marriages: "Physicians and surgeons ought to be consulted when it is already perfected." Also, Sánchez, book 7, on marriage, section 3, number 21, where he presents more examples. And Reiffenstuel adds, number 42: "If, after an examination of the bodies, certain signs of impotence appear... or if the woman is so constricted that she cannot, with-

Translated by churchlatin.ai, a product of Boyne Archives

out danger to her life, consummate the marriage, the marriage must be immediately annulled, and no time should be granted for further investigation, nor is the consent of relatives or of the spouses required, concerning whether they have carnal knowledge of each other." Furthermore, three experts, fully concurring, were found to have discovered a constriction in the woman, and, after the most careful examinations, which they affirmed under oath, as explicitly stated in their testimonies. Therefore, the Canonist proceeded to inquire whether there was a legitimate reason for a dispensation, and he indicated several reasons, which we omit, since the very serious doubt concerning the validity of the marriage is considered a sufficient and most honorable reason for granting a dispensation concerning a marriage already celebrated; on this matter, Cardinal De Luca wrote, in *De Matrimoniis*, part 2, section 8, number 8: "In this case, there was truly and properly not a formal dispensation concerning a marriage that was otherwise firm and indissoluble, but rather a certain administration of justice, administered in the manner of a Prince." Therefore, the Canonist concluded, and he was of the opinion that the Holy Congregation, after reviewing the proceedings, should consult the Most Holy Father concerning a dispensation from the first marriage, together with a dispensation regarding the root of the second marriage. The Theologian also conceded to this opinion in his vote.

OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The Defender of the Marriage made many observations concerning the defects in the judicial process, which we indicated at the beginning, from which we refrain from referring again. Furthermore, he devoted all his efforts to persuading that Carmel had never been impotent, especially because, if the defect of impotence had arisen from nature, and was present from the beginning...

[*Latin ed. p. 532*]

Marriage 534, as had been testified by two physicians at the beginning, could not be overcome by either fever or illness; and the matter being concerned with such a vice, whose cessation had aroused the admiration of those same physicians, whose testimonies the defender, as if in contradiction, refuted at length. But when he asserted that the first testimonies of the physicians were suspect, he confirmed this suspicion by external circumstances, that is, by the fact that Lewis, with the consent of his wife, instituted a suit for the nullity of the marriage; that while the procurator of his judgment had emigrated to Spain; that he had left Michael, who claimed Carmel as his wife. And especially by the fact that the same Michael, in this second judgment, showed himself to be a most bitter enemy to Lewis, whom he even accused most impudently of a dishonorable way of life, indeed of the worst crime, so that the marriage might be dissolved, and that he himself might lawfully take Carmel. All these things, he said, in-

Translated by churchlatin.ai, a product of Boyne Archives

duce a grave suspicion that there was some agreement between them, that Lewis, having dismissed his wife, would surrender her to the power of Michael. All the more so because, in the second judgment, Carmel testified under oath, "that shortly after the dissolution of the marriage, she had an illicit relationship with Michael, which he desired to have her as his wife." Therefore, the defender said, it is necessary to reject as fables, that the woman escaped the powerful force of the typhus fever, nor can it be presumed that she could have persevered for almost five years in a nefarious relationship with Michael without success; nor is it easily presumed that such a dishonorable woman, without any hidden cause and to her own disgrace, would spontaneously declare and assert her impotence at the very beginning of the trial, so that the marriage would be declared null by her own impotence. And if she sought to break the custom of her own husband so briefly, after only four months, she should much more have broken the illicit relationship with Michael, which, however, lasted for six years. With these things established, the defender denied that a remedy could be granted at the root; because, as he said, the second marriage,

[*Latin ed. p. 533*]

535. Marriage would be something other than public concubinage. For, where marriage ought to be, there can be no place for mere concubinage; nor can there be a healing at the root, which is granted when spouses, believing that they have contracted a true marriage, although the marriage is invalid due to some removable impediment, are mistaken. Furthermore, the defender argued that no healing at the root could be granted, since the first marriage, while not remaining valid, has not been consummated; nay, rather, Michael ought to be punished with penalties against polygamists, and Carmel, having been constituted, ought to pay, since the first marriage has not been declared invalid by a double sentence in conformity with the cited Constitution *Dei Miseratione*, § 5. With these and other matters extensively brought to light, the question to be resolved is: "Whether it is a question of the nullity of the first or second marriage, or rather, whether one should consult the Most Holy Father for a dispensation from the first and a healing of the second in this case."

RESOLUTION: The Most Holy Congregation of Councils, having knowledge of the case on January 25, 1873, decided to respond: "One should consult the Most Holy Father for the appointment of the Archbishop (N.) by Apostolic Letters in the form of a *Brevé*, with the faculty of granting a dispensation concerning the first marriage, so that it may be established that the marriage was not consummated, and, after granting the dispensation, to enable Carmel and Michael to renew their consent, and in the meantime, they should separate."

FROM WHICH ONE MAY GATHER: I. Proven impotence, whether absolute or relative, which preceded the marriage and was perpetual, renders

Translated by churchlatin.ai, a product of Boyne Archives

the marriage null by its own right.

1. Compare, if you wish, what I have written about the healing of a marriage at the root in Volume I, page 182.

[*Latin ed. p. 534*]

Marriage 536 II. In the external forum, in order that such impotence may be proven, the form of judgment prescribed in the Benedictine Constitution III must be observed. However, even if, by God's mercy, this form of judgment is observed, it may repeatedly be difficult to judge whether the impotence, whether relative or absolute, is perpetual, if it is established that the marriage has remained only valid by an Apostolic dispensation IV. A marriage which has been declared, by its own right, null due to the absolute and perpetual impotence of the woman, must be restored if the impediment naturally ceases afterwards. V. For the error of a judge, even if probable, cannot render a marriage, which is naturally valid, null, although it may not have been consummated. VI. Therefore, if the impediment of the woman ceases, and the woman marries another man, while the first husband is living, this second marriage will be null, and the woman will be obliged to return to her first husband. VII. Conversely, the second marriage will be valid, if the woman's impotence, whether relative or absolute, was truly perpetual, and has been overcome contrary to or against the order of nature. VIII. In this case, since the first marriage was null by its own right, it could not be restored if the woman married another; for the second marriage would prevent the restoration of the first. IX. Indeed, the same must be said, if the impotence was only relative and perpetual with the first husband, but another man, being separate from the first, has made the woman capable even with the first: for from this fact, the first marriage, which was null by its own right, cannot be revived, since the cessation of the impediment occurred contrary to nature, and the woman was not naturally capable with the first husband. X. Nevertheless, in these circumstances, the Holy See, for greater caution, has been accustomed to grant dispensations concerning only the first marriage, and to validate the second.

[*Latin ed. p. 535*]

Marriage 537 X I. In the matter, based on the acts of the first judgment, although entirely incomplete and affected by a nullity, it appears that the actual physical impotence of the woman was sufficiently established through the sworn testimonies of physicians. XII. However, from this actual physical impotence, it could indeed be deduced that the impotence preceded the marriage; but this deduction, although weighty, did not exceed the limits of probability. XIII. Therefore, considering that the Archbishop stated that the marriage had not been certainly consummated, the Holy Congregation deemed it more appropriate to grant the aforementioned Archbishop a dispensation for the validity of the marriage, in order that it might be ascer-

Translated by churchlatin.ai, a product of Boyne Archives

tained, in some extrajudicial manner, that it had not been consummated. OFFICE OF THE DECEASED. February 24, 1872, and January 25, 1873. Summary of the case. In the town of N, there are two parishes, one under the title of St. Quiricus, the other of the Assumption of Mary. The spouses M, residing in the parish of St. Quiricus, being without children, out of filial affection, took in their young niece. They received her into their home and provided her with everything necessary for her childhood education; but she died at the age of seven. The parish priest of St. Quiricus, who attended the girl in her dying moments, subsequently performed the funeral, with the entire clergy of the same town participating. 1. From this, it is apparent how much more appropriate testimony would have been in this judgment, namely, testimony from those who heard it from a seventh source, that is, from relatives or friends, who would have testified about their belief, based on the words of either the man or the woman at the beginning of the marriage, at a time when any suspicion of collusion was absent; as well as the sworn examination of the spouses. From such depositions, the probability could have been converted into certainty.

[*Latin ed. p. 536*]

Regarding canon 538 concerning funerals: The parish priest of Saint Mary's objected, arguing that he had the right to perform the funeral, since the parents of the deceased girl resided within the boundaries of his parish. The parish priest of Saint Quiricus replied that the girl had been adopted by the spouses M, his parishioners, and therefore should be buried in his church. The parish priest of Saint Mary's, not agreeing with this reasoning, brought the dispute to the Capitular Vicar, who, refusing to resolve it, proposed that it be decided by the Congregation of the Council, writing as follows: "The girl P, not yet having completed her seventh year of age, died in the parish of the Collegiate Church of Saint Quiricus, in this diocese, at the home of her grandparents, who declared and treated her as their own; while her parents, however, reside in another parish. The parish priest of Saint Mary's considered that he had the right to celebrate the funeral and to retain the body of the girl until burial; the parish priest of the Collegiate Church objected, asserting that the aforementioned grandparents had adopted her as a daughter, and had performed the customary parish duties. But when the aforementioned proof of adoption was presented, only a written statement was submitted, signed after the girl's death by the grandparents, the parents, and witnesses, in which, without any other legal act, they affirmed the fact of the adoption. Therefore, I humbly ask Your Eminences: 1) whether the aforementioned statement has the force of proving the adoption; 2) whether the parish priest of the Collegiate Church acted correctly, or whether, on the contrary, he violated the right of the parish priest of Saint Mary's, who, therefore, may claim a portion of the wax or money, or rather, all that he received from it."

Translated by churchlatin.ai, a product of Boyne Archives

The Capitular Vicar was instructed to hear both parish priests in writing and to transmit a copy of the aforementioned statement. After these were transmitted by the Capitular Vicar, a decree was issued in the Secretariat of the Holy Congregation, which is placed on this page, indicating that the matter is restricted and must be brought before the full Holy Congregation for resolution. And the case was presented under a formula of doubt, which is at the bottom of the page.

[*Latin ed. p. 537*]

539. A concise discussion concerning the laws of burial. The defense of Saint Quiricus is presented. The PAROCH (parish priest) is ejected. Saint Quiricus, having considered the matter, states: 17, number 24: ''According to the office of the Paroch, Samuel, treatise, first part, 'an adopted person, if he dies, while the adoptive father is living, must be buried in his father's tomb; if he dies when the adoption is still in effect.' Sylvester, verb. 'sepult,' and question 8, district 4: 'Adoptive sons, if they die while the father, under whose authority they were, is still living, must be buried in the tomb of that same father.' Furthermore, in the case presented, a girl died while still alive, and her father was still adopting her: therefore, she ought to have been buried in his tomb. Indeed, the testimony presented by the Paroch of Saint Quiricus contains the following: 'We, the spouses M, belonging to the parish of the Collegiate Church of Saint Quiricus, declare that in the year 1867, we received and accepted the girl P as an adopted daughter, and we inscribed her as an integral part of our family in the registry of the civil status of this community... and we are prepared to confirm this with an oath.' It must not be said that such an adoption is invalid due to the lack of legal formalities. For in the case presented, we are dealing only with an imperfect adoption; therefore, it is sufficient that there is the consent of both the adoptive parents and the father of the adopted person. Especially since the matter concerned not civil effects, but ecclesiastical law concerning burial: therefore, the formalities prescribed by civil law are irrelevant to the present adoption, from which the question arises. Therefore, it was concluded that the Paroch of Saint Quiricus lawfully performed the burial.

THE LAWS OF THE PAROCH OF SAINT MARY. In opposition to the Paroch of Saint Quiricus, it is argued that the Paroch of Saint Mary has the right to determine that deceased minors must be buried in the tomb of their ancestors, if they have one; and if they do not have one, they must be buried in the parish church itself; chapter 4, concerning burials, number 6. However, since the tomb of the ancestors...

[*Latin ed. p. 538*]

Regarding the matter of burying a seven-year-old girl, she was to be buried in the church of Saint Mary, which is the parish of her parents. Nor does the asserted declaration of adoption present a difficulty, since this

Translated by churchlatin.ai, a product of Boyne Archives

declaration does not demonstrate that a legitimate adoption has been made; for although an imperfect adoption does not require the authority of a Prince, it does require the decree of a competent judge. Indeed, it is written in the law, *Corpus Iuris Civilis*, concerning adoptions: "Those who are under the power of another, according to civil law, can only be adopted before him, before whom full legal action is possible." To which Baldus wrote: "The legitimate act of adoption cannot be 'explained' except before him who has full jurisdiction over that act." And Salicetus: "Magistrates adopt those who are under the power of another." Moreover, in the law 4 *Codex*, in the same title, it is stated: "Adoption is usually carried out with a solemn legal order before the president, even though it is done through a written document." The Glossa adorns this law thus: "If only a written document intervenes, this does not mean that the adoption is valid, unless it is done with solemnity before a competent judge." And Donellus, in his work on civil law, volume 1, Book 2, chapter 22, paragraph 20, concludes thus: "If someone, having omitted the solemn legal order, institutes an adoption, as is most often done through written documents, it is of no effect, *Codex* 4. Therefore, if someone has been adopted before one who was not a magistrate, or before an unsuitable magistrate, or if some of the aforementioned persons were not present in the matter, but only a procurator was present, or if the public acts of the matter were lacking, the adoption is not valid." All of these things, being absent in the present case, mean that there is no adoption to be declared. But furthermore, the parish priest of Saint Mary, after considering several reasons for which he considered the declaration of adoption, discovered after the girl's death, to be suspect, noted that there had been other similar cases in the same town and in his own parish, and therefore concluded that a true and legitimate adoption had indeed taken place; and that the right to burial had not been altered.

[*Latin ed. p. 539*]

Regarding the law concerning funerals: It is not difficult that the parish priest of Saint Quiricus was present with a dying girl; for it is not from this that the right to perform the funeral rites is determined, concerning which Scarfant. wrote in this manner in his work, volume 2, addition 48, number 1: "It is defined that the assistance of the law which the parish priests have pertains to the spiritual office that the parish priest exercises towards his parishioners while they are alive, providing spiritual things; therefore, it pertains only to the parish priest of the person deceased." Furthermore, in chapter 2, section 6, and in the same title, text, in chapter 1, in Clement., it is written.

Formerly, it was concluded that the right to perform the funeral rites belonged only to the parish priest of Saint Mary. With these observations, the matter at hand is to be resolved.

Translated by churchlatin.ai, a product of Boyne Archives

Doubt: "To whom does the right to perform the funeral rites belong in this case?"

Response: The Sacred Congregation of the Council, having knowledge of the case on February 24, 1872, requested that certain documents be examined, and the following response was given: "Further evidence is required, and the documents pertaining to the status of the parish and the civil status must be presented, and this must be notified to the Bishop."

These documents were presented, but the document pertaining to the status of the parish of Saint Quiricus could not be considered reliable, since the name of the girl appeared later, with the words "left as a niece, received as an adopted daughter." However, in the document pertaining to the civil status, no mention of adoption was found.

Therefore, the case was presented again on January 25, 1873, and the Sacred Congregation considered it appropriate to respond to the doubt in the following manner: "Affirmatively, in favor of the parish priest of the Assumption of Mary."

[*Latin ed. p. 540*]

Regarding the laws concerning burial: From which the following are deduced: I. Those who have died before reaching the age of reason, who were under the authority of the father, must be buried in the family tomb or in the parish church of their paternal home. II. They remain under the authority of the father until it is proven that a legitimate adoption has taken place, by which the minor son, according to civil laws, has passed into the authority of the adoptive father. III. For, according to reasonable civil law, which, in accordance with the norm of natural generation, establishes the right of adoption, a legitimate and firm transfer from one paternal authority to another must occur. IV. Once such a transfer has been proven, the paternal rights are considered to have been transferred to the adoptive father; therefore, the minor adopted son must be buried in the tomb of the adoptive father. V. If a legitimate and complete adoption has not taken place, then the canonical rights, which fully apply to the minor and free him from the paternal authority, regarding the assignment of the paternal tomb, remain in force.

Decree. March 23, 1872. Summary of the case. In the Diocese of N, there is a simple benefice under the invocation of the Patronage of the Blessed Virgin Mary, of which the Rector enjoys the right of patronage, along with other relatives of the founder. The church of this benefice is located in a place that is two or three quarter-hours away from the churches of the three surrounding parishes. Approximately five hundred inhabitants are under the spiritual jurisdiction of this church and are subject to the aforementioned three parishes. For the sake of convenience, the inhabitants of

Translated by churchlatin.ai, a product of Boyne Archives

this place generally comply with the precept regarding attending Mass.

[*Latin ed. p. 541*]

543 The obligations in the aforementioned church of the Patronage are fulfilled; moreover, they attend the parishes to hear the explanation of the Gospel. The deceased Beneficiary, the Bishop of the diocese, having been moved within the boundaries of whose spiritual benefit it lies, considered that said church should be erected as a chapel. Following this reasonable and pious intention, the present Bishop endeavored in every way to reconcile the good of souls with the integrity of the foundation. And therefore, he declared that it would be sufficient for him if the church, as is presently the case, retained the use of the aforementioned Holy Sacraments, and that the Oil of the Sick would be permanently available, and that it would be permissible for a priest, introduced with the title of Vice-Parish Priest, subject to the law of residence, to preach the Gospel, administer the Sacraments, and perform other sacred ministrations whenever it was necessary and the piety of the faithful required it. And leaving the actual Rector with the usufruct of the Benefice, as well as the functions of Titular and Dedication, the Vice-Parish Priest would be the Rector of the church itself. The Bishop then decided, with the favor of this Vice-Parish Priest, to grant him a fixed sum of sixty [units], to which would be added another sum from uncertain revenues; so that the priest could live there comfortably and decently. The Rector opposed these resolutions of the Bishop, stating that he did not wish to be bound by the law of residence, that he did not consent to the church becoming a sacramental church, and that no Parish Priest should acquire any right over it. He added that he was prepared to preach on Sundays; but for hearing confessions, several priests would be present in that place. As this remedy seemed insufficient for the culture of souls, and as the Bishop did not believe that anything would be accomplished with such an intention of opposition, the Rector appealed to the Sacred Congregation, requesting that he be allowed to erect the aforementioned church into a Vicariate. The Rector and the Patrons, on the other hand, petitioned that the church, and the Benefice attached to it, should retain the status, nature, and qualities that they had acquired by law from the foundation. At the request of the Sacred Congregation, the parties appeared on two occasions to present their rights, and the cause was proposed for examination according to the laws.

[*Latin ed. p. 542*]

544. A concise discussion of the obligations. THOSE WHICH ARE FAVORABLE TO THE RECTOR. The Rector observes that the will of the founder of this Benefice is, above all, favorable to him. For in the instrument of foundation, there is a petition among others, which states that if the Rector of that church were to be appointed a Canon, or a Parish Priest, etc.,

Translated by churchlatin.ai, a product of Boyne Archives

it should be understood that that church is vacant, and that another Rector of the Benefice should therefore be appointed. And elsewhere in the same instrument, it is stated: "that the Benefice should be simple, without a cure of souls, and by law free from lay patronage; that this nature, quality, and condition should remain immutable and be maintained for all future times, and in no way altered." Furthermore, it is stated: "that the Rector, for the time being, should be bound to serve that church beneficially in a commendable manner." From these words, two principal conditions imposed by the founder are evident: namely, that the church should be without a cure of souls, and that the Rector should serve it commendably. The second condition, while implying a general obligation to fulfill it, is satisfied, since the Rector annually performs spiritual exercises for a period of eight days, and the Mass is recited on all feast days. From the foundation, the Rector cannot be exempted from residence; but he cannot obtain another residential Benefice, lest he be too much removed from the church of the Patronage. If a question arises about a derogation, it must be remembered that, according to the Council of Trent, Session 23, chapter 6, on Reform, a derogation is not possible except for a just and necessary cause. And in Session 23, chapter 3: "Therefore, when from the foundation, erection of Benefices, or other constitutions, certain qualities are required, or certain obligations are imposed in the collation of Benefices, or in any other disposition, these should not be derogated from." Furthermore, it was noted that religious instruction should not be lacking, since the inhabitants of that place could easily access parishes, and more sermons should be held in the Benefice church each year.

[*Latin ed. p. 543*]

545 It has never happened, it is noted, that anyone has died without the Sacraments. Nevertheless, if any situation should arise that might jeopardize this, there must be a need to have another church, convenient and sufficiently suitable for this purpose, and to which a pension of 30 scudi is already reserved. THE MATTERS REMAINING ARE FAVOURABLE TO THE BISHOP. The Bishop has been moved to request the desired concession by no other reason than the good of souls. He asserted, in two separate reports, that there were five hundred faithful people living near Beneficium, who, due to the distance, were deprived of instruction; and therefore, the administration of the Sacraments was neglected. Furthermore, there were fewer priests available, and others were occupied with the sick and infirm, or were not devoted to matters of faith; and the pastor, while present now, might at some time migrate elsewhere. Therefore, the Ordinary earnestly requested the erection of that church at Beneficium as a subsidiary church to two parishes, and he requested that a pastor be appointed from there, either by the Bishop or by the Holy See, so that the choice would not fall upon a person who

Translated by churchlatin.ai, a product of Boyne Archives

was either unable or unwilling to preach, teach the catechism, assist the sick, hear confessions, and perform other such duties. The need or utility of spiritual assistance for the aforementioned faithful appeared to be a sufficient reason to justify the derogation of the pious will. Moreover, the repeated emphasis on the good of souls confirmed the purpose. He stated that the ignorance of the faithful in that place had grown to the point that many were born, grew up, and died without knowing the duties of the Christian name; and that, since he had held the office of Bishop, two women had died without any religious consolation. The other church indicated by the pastor was considered less suitable, because it could not accommodate all of those faithful; and it was also less convenient, because it did not occupy a central location among those faithful. With these and other considerations noted, the matter was to be resolved. *Acta, tom. VII, fase. LXXXI. 35*

[*Latin ed. p. 544*]

Question 546. "Whether there is a place for the erection of a Beneficed Church in a Vice-Parochial position for the administration of the Sacraments; or rather, whether the qualities and nature of both the Church and the Benefice must be preserved according to the foundation in the case? "

RESOLUTION. The Most Holy Congregation of the Council, having knowledge of the matter, on March 23, 1872, judged it fitting to respond: It is to be supplicated to the Most Holy Father, so that, by means of a provision in the Beneficed Church G, while preserving the qualities and nature of both the Church itself and the Benefice according to the foundation, all parochial functions may freely be exercised by the Vicar in that manner which the Bishop, in the Lord, shall deem fitting, independently of patrons, whatever may be to the contrary.

FROM WHICH ONE MAY GATHER:

I. If necessity or the evident utility of the faithful requires that a temple under lay patronage serve the new parish or the new parochial Vicariate, this may be granted, by Apostolic authority, in such a way that the temple is not erected into a parish, but rather the parish is erected within the temple.

II. The will of the founders should not be infringed upon more than necessity or evident utility require, so that, as far as possible, the temple may serve both the patrons and the new parish with distinct and separate rights, according to the law of the foundation.

III. This is to be granted especially by the Apostolic See, if the law of the foundation, by its very nature, does not hinder the erection of a parish as stated in the title.

Compare similar cases under the words "Translation of a Parish" or "Dismemberment of a Parish," as in Volume I, page 217, and in the present

Translated by churchlatin.ai, a product of Boyne Archives

Volume, page 41, and elsewhere.

[*Latin ed. p. 545*]

Jurisprudence 547. Patronage. Dated June 22, 1872. Summary of the Case. On December 1, 1867, the parish priest of the church of T, which was subject to a lay patronage, was, by order of the Bishop of the diocese of M, within whose boundaries the parish of T is located, promoted to another parish. Since, due to this promotion, the church of T became vacant, the Bishop considered appointing a new parish priest, and announced a public competition. Of those who presented themselves for the competition, five were approved by the Ordinary, as was fitting. Of these five approved candidates, only three were presented to the lay patrons (according to the custom of ecclesiastical patronage), so that they might choose from among them. The patrons refused, and named another priest, not from the three, but from one of the five approved. The Ordinary denied this request for canonical institution, because the one named was not among the three whom he had presented as candidates. The matter, with the passage of time, reached a point where a resolution seemed impossible. Therefore, the Bishop considered entrusting the matter to the Congregation of the Holy Council. The Congregation received the petition, and immediately instructed the parties to present their rights, as they wished. Synopsis of the Arguments. THOSE WHICH SUPPORT THE BISHOP. The Vicar Capitular of the diocese of M (for the Bishop had, in the meantime, died) made every effort to defend the actions of the deceased Bishop. He maintained that the matter was in accordance with the customs and laws of the region, both civil and ecclesiastical.

[*Latin ed. p. 546*]

The patronage rights, number 548, had been established at various times by the civil government, in order to establish a single method for dealing with vacant parishes, and this method had been established by the most recent law; namely, that without any distinction, both lay patrons and ecclesiastical patrons, those who possess benefices and those who are concerned with the care of souls for the Holy See, should be treated equally. However, the civil authorities had disregarded these provisions, since the Apostolic Nuncios stationed at that government never failed to point this out. Regarding custom, it was added that the disposition of civil law and the practice of the Curia differed. The laws stipulated that, without any doubt, all parties concerned should present witnesses to support their claims; whereas the Curia had the custom of offering only three witnesses. However, there had never been any opposition to this practice in the event of vacancies, and those whose interests were involved had never contradicted it. It is well known that a local custom has the force of law, as is taught in *lib. 2 Decret., title 26, n. 140*, and that customs can abrogate and abolish qualities, as

Translated by churchlatin.ai, a product of Boyne Archives

is evident in *lib. 12, cap. 8*. For example, Reiffenstuel states in *n. 8, de Synod, dioeces.*: "Nothing is more common than a human law, even if it is contrary to a custom, which can be legitimately abrogated by a custom that is canonical and reasonable." When a reasonable custom is considered, Reiffenstuel explains it in *lib. 1, Decret., c. 4, n. 34*: "Generally speaking, a custom is unreasonable which is contrary to natural or divine law, or which is disapproved of by canon law, or which grants permission to sin, or which is harmful to the common good in any other way; but a custom is considered reasonable if it does not fall into any of these categories." Furthermore, he states that it is not necessary for a custom to have existed for a long time in order to be considered legitimately established; as it has been peacefully possessed from the year 1819 to the present time. No one can deny that such a custom is reasonable, since it is not contrary to law.

[*Latin ed. p. 547*]

The patronage [of benefices] is neither natural nor divine; it does not provide an occasion for sin. These and other considerations favor the practice of the deceased Bishop and the Curia. The Patrons, against the Capitular Vicar, maintained that the things which the Patrons had brought before the Episcopal Curia, had, by custom, violated both canonical and civil laws concerning this matter. For it could be to no one unknown that the disposition of Trent (Tridentini), chapter 18, session 24, concerning Reform, stipulated that lay Patrons have the right to nominate, and that it is the duty of Bishops to grant canonical institution only to those whom, after examination, are found suitable. This Tridentine disposition established a distinction between ecclesiastical patronage, having given a rule for conferring ecclesiastical benefices, and the case where the benefice is of lay origin, stating: "If a lay person has been presented as Patron, he must be examined by those appointed (namely, by the synodal examiners), as above, and only if he is found suitable shall he be admitted." Therefore, they argued, if the Bishop is compelled to grant canonical institution to one presented by a Patron, who has been found suitable after examination, there is no longer any need for a concurrence [of Patrons]. This was confirmed by laymen, and indeed by several authorities; De Luca in Annoi, ad Concil., disc. 32; de Beneficiis, disc. 23; and de Parochis, disc. 37; Ferraris, Biblioth. can., verb. Benef., art. 3, n. 31, and others. Furthermore, they reproached the Curia itself for having disregarded the very civil ordinances which it had invoked, for these ordinances contained the words: "For all Parishes, provision shall be made, with a public notice of concurrence, and with due observance of the prescriptions of the Council of Trent." These words imply full observance of Trent; but they restrict the rights of Patrons only with regard to the concurrence; and by no means with regard to other matters, which are left entirely intact according to the Tridentine disposition. They declared themselves prepared to submit to the civil ordinance, which called

Translated by churchlatin.ai, a product of Boyne Archives

for a general concurrence for all parochial churches; but all the Patrons were to be present.

[*Latin ed. p. 548*]

The law concerning patronage has been enacted at various times by the civil government, in order to establish a single method for dealing with vacant parishes, and this method has been established by the most recent law; namely, that without any distinction, both lay and ecclesiastical patrons are to be presumed to have the right to present candidates for the benefice, and that the Holy See, with the concurrence of the ecclesiastical authorities, shall have the care of souls. However, this law has ignored the ordinances of this kind, since the Apostolic Nuncios, when present at the civil government, never failed to add their customary practice to the disposition of the civil law, and the Curia made a distinction. The laws stipulated that all patrons, without any doubt, were to present candidates who had been approved; whereas the Curia had the custom of offering three approved candidates to them. But there was never any opposition to such a practice in the event of vacancies, and those whose interests were involved never contradicted it. Furthermore, the custom of a particular place has the force of law, as is taught in *lib. 2 Decret., suetudinem, tit. passim*, by the authors, 26, n. 140, and is necessary, for example, as Reiffenstuel states. It is well known that the qualities of a custom can abrogate and abolish, as is evident from the work of Benedict XIV, *lib. 12, cap. 8, n. 8, de Synod, dioeces.*: "Nothing is more common than to see any human law, even if contrary to a custom that is canonical, reasonable, and legitimately established, abrogated." When a reasonable custom is considered, Reiffenstuel explains it in *lib. i, Decret, c. 4, n. 34*: "Generally speaking, a custom is unreasonable which is contrary to natural or divine law, or which is disapproved of by canon law, or which grants permission to sin, or which is harmful to the common good in any other way; but a custom is considered reasonable if it does not fall into any of those categories." Furthermore, he says, it is not necessary for a long time to have elapsed in order for a custom to be considered legitimately established; from the year 1819 to the present time, it has been peacefully possessed. No one can deny that such a custom is reasonable, since it is not contrary to law.

[*Latin ed. p. 549*]

The patronage is neither natural nor divine; it should provide opportunities for avoiding sin, and these and other things remain according to the practice of the deceased Bishop and the Curia. The Capitular Vicar produced [evidence]. Those who claimed to be patrons protested against the Curia, alleging that it had disregarded both canonical and civil laws promulgated by the government regarding this matter. For it cannot be unknown to anyone that the Council of Trent, in chapter 18, session 24,

Translated by churchlatin.ai, a product of Boyne Archives

concerning Reform, decreed that lay patrons should enjoy the right of nomination, and that it should be the duty of Bishops to grant canonical institution only to those whom, after examination, they have found to be suitable. This Tridentine decree established a distinction between ecclesiastical patronage, having provided a rule for conferring ecclesiastical benefices, and the case where the benefice is of lay origin, stating that it must be conferred by those appointed (namely, after examination, and not those "first in rank"; that is, the lay patron), "unless he is found to be suitable." Therefore, they argued, if the Bishop is compelled to grant canonical institution to a candidate presented by a lay patron, and does so after finding him suitable through examination, there is no longer any need for a concurrence. This was confirmed by several authorities: De Luca in *Annotationes ad Concilium Tridentinum*, discourse 32; on Benefices, discourse 23; and on Parishes, discourse 37; Ferraris, *Bibliotheca Canonica*, under the word "Beneficium," article 3, number 31, and others. Furthermore, they argued that the Curia itself had disregarded the very civil ordinances that it had invoked: for they maintained that these ordinances contained the following: "For all parishes, provision will be made, with a public notice of concurrence, and with the prescriptions of the Council of Trent observed." These words imply full observance of the Council of Trent; but they restrict the rights of patrons only with regard to concurrence; and in no way with regard to other matters, which are left entirely according to the provisions of the Council of Trent. They declared that they were prepared to submit to the civil ordinance, which provided for a general concurrence for all parochial churches; but all concurrences...

[*Latin ed. p. 550*]

The protectors of the five hundred and fifty *tium* positions, whose names had been approved through examination, maintained that these names should be presented to them, so that the selection could proceed freely concerning them. And they declared that they did not wish to be presented with only three candidates from among the approved, according to the custom of the Roman Curia; because this was contrary to the civil law, which the Curia unjustly invoked. And with regard to the custom, they rejected it, because it had not been specifically recognized by pontifical authority. For the Council of Trent, by a decree that was declared invalid, prescribed a strict observance of the entire disposition concerning this matter, in the same chapter 18, session 24, above; notwithstanding that, as it were, it had been made, which, etc. And the Most Holy Pius V, in his secret allocution, used these words: "Concerning the provision of parochial churches by the Bishops... contrary to or in violation of the form transmitted by the Council, especially the clause 'All other provisions, or those made in any other form, or those to be made in the future, we declare to be null and of no value, or of any force, and to confer no right

Translated by churchlatin.ai, a product of Boyne Archives

or title, even in appearance, and to afford no claim whatsoever.'" But they maintained that it was clear to all that the custom, even for a long time, was not valid against Trent, and against the pontifical Constitutions. Furthermore, they denied that the custom had been legitimately prescribed in this matter, both because the Curia had not presented to the protectors only three candidates in each vacancy, but all those who had been approved through examination; and also because it concerned acts of a voluntary nature, by which the protectors could not cause harm to their successors. For if, at times, the protectors should choose those who were among the three presented by the Curia, they would certainly demonstrate nothing other than a benevolent disposition towards ecclesiastical authority, and not that they had relinquished their own right. With these points noted for both sides, the following matters were proposed for resolution.

[*Latin ed. p. 551*]

Jurisprudence 551. Doubts. I. "Whether the custom of the Curia [presumably referring to a specific curial practice] is maintained in this case." And to the extent that the answer is negative. II. "Whether there is a place for the institution [of a priest] presented by the 'Patrons' [presumably referring to lay patrons] in this case."

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on June 22, 1872, judged it fitting to respond as follows: To I. Negatively. To II. Affirmatively.

FROM WHICH WE GATHER: I. It is surprising to see the Curia invoking, in this ecclesiastical matter, either appropriately or inappropriately, civil laws to protect its rights. II. Indeed, there is nothing more explicit in canon law than that, even if laws are favorable to the Catholic Church, they have absolutely no value from themselves if they have not been confirmed by the competent ecclesiastical authority. III. Nor can it be concluded from the fact that Apostolic Nuncios exist where such civil laws are introduced that these laws are to be considered approved: for many things are tolerated through patience, which, if brought before a judge, should not be tolerated. IV. The Council of Trent decreed that lay Patrons can present to the Bishop whoever they wish, so that the Bishop may institute [him] in a parochial benefice, if he finds him suitable; but the Bishop or Ordinary cannot refuse him, whether the suitability is determined through a competition, if a competition is in force according to custom, or in another way. V. It is sufficient that the Patrons present someone suitable, and that the suitability is recognized, either by them or by the Ordinary, even if perhaps there are others who are more suitable and worthy.

[*Latin ed. p. 552*]

552. Patronage. Benefices of this kind, pertaining to patronage, are conferred either by agreement, or by a fact or custom established by

Translated by churchlatin.ai, a product of Boyne Archives

law; among those who are deemed suitable, as many as the Patron may wish, may be presented to the Bishop for appointment to the benefice. APPENDIX, ARTICLE XII, III. Concerning craniotomy, or the killing of a child in the womb of the mother, in order to save the mother from certain death. Our adversary, in refuting the article which I wrote on page 308 and following, concerning craniotomy of a child in the womb of the mother, constantly insists on a false premise, as if I defend the opinion which I expound and defend there, because there are some authors who, contrary to Sánchez and others, have taught a different opinion. It is enough to cast one's eyes upon that article, so that everyone may immediately perceive that the words I have written are these: "If the solution to this most serious question is sought only in the extrinsic value of opinions, or in the mere authority of authors, it would be easy. For the authors generally resolve it in such a way as to teach that such killing of a child is never licit." These words seem quite clear. But Sánchez himself gave me the opportunity to call that opinion almost common, when this most learned author cites some authors to the contrary. But not because some are cited against the common opinion, did I maintain my opinion, but from another point: that is, because the common opinion is based on a principle which cannot be invoked in the question which we are discussing. For the authors constantly adduce the reason that the direct killing of an innocent person is inherently evil; and therefore, the killing of a child in the womb of the mother is also inherently evil, even if this killing is the only means of saving the life of the mother. Examine and re-examine the cited authorities, and you will find that they are in conformity with the single reason presented here, and you will find nothing else of importance. But the question is not whether the killing of an innocent person is licit or not, considered in itself; nor is the question whether evils can be done in order that good things may result: which no one of sound mind would deny to be illicit. But the question is about mutual duties and rights to life, which...

[*Latin ed. p. 553*]

Appendix XII 553: In the case where a mother and child are mutually threatened with death, and the mother must either free herself from the child, either through medication or by other means, or both will certainly die, the question arises: does the child, in that state in which it is necessarily destined to die, have the right to choose the means by which both it and the mother will die, excluding any other means that, while not worsening its condition (since it is about to die), would preserve the mother's life, as I have written above? Or, in other words: does the child, in that condition of imminent death, have the right to cause the mother's death along with its own? Or, again: is the mother obligated to keep the living child in her womb as long as it certainly foretells her own certain death? This question, concerning the mutual duties and rights to life that arise in

Translated by churchlatin.ai, a product of Boyne Archives

that condition, has not been explicitly treated by the authorities; one, who has explicitly considered the question from this perspective, has concluded contrary to the common opinion, namely, Theophilus Rainaud. But I will return to this matter, because I have seen another esteemed opponent write an article in which he also attempted to address the state of this question. Now, since this learned opponent, according to what I have stated in Appendix XI, page 491, calls me to another question, namely, whether the opinion that denies permissibility should be considered so common that no author, whether ancient or modern, should be excepted; and he himself affirms that there is such an opinion, to which no one can object without incurring the censure of the received opinion of St. Canisius: to contradict the unanimous opinion of all schools of theologians, if it is not heresy, is at least very close to heresy; I will briefly, but sufficiently, address this question. And first, it is wrongly alleged that this censure of St. Canisius applies to the matter we are discussing. For, in order for the consensus of a school to have that force, it is necessary that it represent the doctrine of the Catholic Church as certainly pertaining to the deposit of revealed truths. Indeed, once we are outside the deposit of revelation, any heresy is neither censured nor understood. Nor is it sufficient that theologians commonly transmit a doctrine as a consequence of some revealed moral principle, so that a contradictory doctrine can be said to be close to heresy. For such deductions from revealed principles would have to be held true by the unanimous authority of theologians; but not as dogmatic: for theologians are not authentic witnesses preordained by God to determine the doctrine of revelation. Therefore, he who contradicts without any clear reason may be called rash, but never close to heresy. Furthermore, whether the consensus of theologians represents the doctrine of the Catholic Church as certainly pertaining to the deposit of revelation, or transmits consequences from revealed principles, it must be so unanimous that it is constant and universal. It is not sufficient...

[*Latin ed. p. 554*]

554 Appendix XU: In order that a doctrine may be common in a particular school, or common for a particular age. For such a doctrine would not exceed the limits of opinion, the value of which opinion must not be estimated solely according to authority; but rather according to the reasons which the theologians have adduced. But we are dealing with the solution of a moral case, that is, with the opinion of Moralists teaching that a pregnant mother can save her own life by hastening the death of the fetus, either by means of a drug or by an instrument; and this opinion, although it may be said to be entirely common, in no way pertains to the deposit of revealed truths. For in this opinion, neither the apex nor the vola is found, either in the sacred Scriptures or even in tradition. And these same Moralists are far from presenting their opinion as pertaining to the

Translated by churchlatin.ai, a product of Boyne Archives

deposit of revelation. Therefore, it is wrongly alleged in the theme that Cani's censure: any shadow of heresy is very far removed from the denial of this opinion. Nor should you say that this opinion is a consequence of the revealed principle, "Thou shalt not kill"; as if it were so argued: the revealed principle is "Thou shalt not kill": but in the theme, an infant who is about to die is killed in order to save the mother: therefore, the opinion that teaches that such a killing is illicit is based on the revealed principle. For it is answered that if this consequence were taught by all the theologians of the school, it would have to be held as true, by reason of the authority of those theologians, and not as a dogma. Therefore, any shadow of heresy is also far removed from a contradictory proposition. And this contradictory proposition, although it might be considered false or imprudent and rash, if it were not based on any serious reason; nevertheless, it would not be so considered, if some evident and serious reason or authority were brought forward by anyone, which would persuade one to judge otherwise. For in this case, it can be shown that even the common opinion of all theologians is false. This concerns Cani's censure, as expounded by the most learned Melchior Cani. Also, see the most learned theologian, I. B. Franzelin, *Tractatus de divina traditione*, Thesis XVII. But in the opinion with which we are dealing, we do not need these things that I have expounded. For we are dealing with a mere opinion of Moralists and of some Canonists, which pertains only to moral prudence, and nothing more. I omit here the proper distinction that we are not dealing with the opinion of a school of theologians: for we are not dealing with the Thomistic school, the prince of schools, nor with any other school properly so called: but with the opinion of Moralists or Canonists, who have never expressly treated this question, but rather write after each other. But, leaving these things aside, what I am considering now is this: since the case with which we are dealing has always existed in the entire society, from that time when it was said to the woman in labor, "In pain you shall bring forth children," let us inquire how it has been resolved from the beginnings of the Church and subsequently: for

[*Latin ed. p. 555*]

Appendix XII 555. If we find nothing among the ancient ecclesiastical writers, among the Fathers, or in the sacred canons that indicates that it is not permissible to procure an abortion to save the mother; we already have a very serious indication that such a case was not resolved among the ancients, as the more recent ones have resolved it with such ease. However, upon examining antiquity, we find absolutely nothing that even remotely indicates that such a necessary abortion or killing of the fetus, in order to save the mother's life, was considered illicit. This is evident from the fact that all moralists or canonists, so eager to seek out ancient authorities in support of their views, have been unable to adduce any such authority.

Translated by churchlatin.ai, a product of Boyne Archives

Secondly, it is evident from the fact that although the ancient Fathers frequently condemn in their writings and sermons abortions and the killing of the fetus, and similar acts, they always limit this condemnation to malicious intent, contrary to the opinion of the pagans, who believed that abortions could be lawfully performed at will. To give a few examples, for instance, Tertullian in *Apologeticus*, chapter IX, severely condemns abortions and the exposure of children, and in response to the objection that the fetus, while still enclosed in the mother's womb, was part of the mother, and therefore could be aborted at will, he replies: "To us, however, once homicide is forbidden, even the fetus in the womb, 'while still blood is being mingled with blood,' may not be destroyed; 'to hasten the death of a man is forbidden; nor does it matter whether one snatches away the soul of one who has been born, or disturbs one who is being born: for man is both he who is, and he who is to be, for every fruit is in the seed.'" St. Basil in his canonical letter to Amphilius, number 2: "That which corrupts the fetus through malice deserves the punishment of murder. But those who are formed, or even those who are not yet formed, are not inquired into by us." St. Augustine in *De Nuptiis et Concupiscentia*, Book I, chapter 15, quoted by Gratian in chapter 7, cause 32, question 2: "Sometimes this lustful cruelty, or cruel lust, goes so far as to procure poisons for sterility; and if that fails, to extinguish and destroy the conceived fetus in some way within the womb, wishing their own offspring to perish before it lives, or, if it is already living in the womb, to kill it before it is born." The Council of Ancyra, canon 21: "Concerning women who commit fornication and kill their children, or who act against themselves so as to expel the conceived fetus from the womb, the ancient definition removes them from the Church until the end of their lives; but now we define more humanely, that we grant them a period of ten years, according to the prescribed degrees of penance." And so, throughout, while these things are condemned, the discussion always concerns the malicious killing of children; which is an indication that, although the case we are discussing was certainly known to the Fathers, the Fathers were certainly not willing to condemn such a case as illicit. Indeed, there are indications and arguments that the Fathers not only did not condemn cases in which necessity compelled abortions and killings of the fetus, but that they excused such cases, and considered them lawful.

[*Latin ed. p. 556*]

556 Appendix XII This can be inferred in general from the canonical letter cited by St. Basil to Amphilochius, in which St. Basil speaks three times about infanticide, establishing canons according to the custom of the Church: namely, in citation no. 2: "She who corrupts the fetus through deliberate action shall incur the penalties of homicide." Also, in no. 33: "A woman who gives birth on the road, and does not care for her fetus, shall

Translated by churchlatin.ai, a product of Boyne Archives

be held guilty of the crime of homicide." Again, in no. 52, it is repeated: "She who neglects the fetus born on the road, if she could indeed preserve it but scorned to do so, or if she thought that by doing so she would conceal her sin, or even if driven by a wholly cruel and inhumane thought, shall be judged as for homicide. But if she could not preserve it, and the fetus perished through solitude and lack of necessities, forgiveness shall be granted to the mother." Here, note: 1° That we are dealing with a canon which St. Basil transmitted to Amphilochius, according to the understanding or custom of the Church, as can be gathered from the entire context. 2° That we are dealing with a woman who gave birth on the road, thinking to conceal her sin; who therefore exposes the fetus to the danger of death in order to hide her sin: and therefore, if the infant dies due to lack of necessities, such a death must be attributed to the mother, at least in this case. 3° Although the infant perishes through the mother's fault, the canon states: forgiveness shall be granted to the mother, and she shall not be subject to canonical penalties as the guilty party of homicide. From these things, one can infer what St. Basil's opinion would have been if he had been presented with the case we are discussing. Hear Basil: the mother and her fetus are in imminent danger of death: both are certainly about to die soon: the mother does not scorn to save her child, indeed she strongly desires him to be safe, but she also strives to avoid the death that the dying infant certainly inflicts upon her: she sees no other means of preserving her own life than to hasten the death of the infant, either through poison or through a weapon: but she fears to do so, for she is not driven by a cruel or inhumane thought. What she seeks, what she urges, in the present situation is: since she must die with the infant, in a way that she herself can be saved; she does not seek the death of the dying infant, but she strives to preserve her own life as much as possible. Tell me, Basil, is it licit, is it inherently evil, to cause the abortion and death of the fetus? For if it is inherently evil, the woman must undergo the canonical penalty; for she would be, as they say, guilty of homicide: and she should not be forgiven, lest other mothers seize the opportunity to commit such grave sins: so what do you say? O Reader, compare both cases, and you will easily see what Basil would have answered. Do you not see that such a case is not included under the general canon, when the canon explicitly states that she who corrupts the fetus through deliberate action (Kar è-Kirridevo-Lv) shall incur the penalties of homicide? With these words, the corruption of the fetus through necessity is excluded, which cannot be preserved. But this, which we have inferred about the opinion that prevailed among the Church Fathers in the case we are discussing, is explicitly stated by Tertullian.

[*Latin ed. p. 557*]

Appendix XII 557. These facts are confirmed by testimony. This testimony, although found in the book *De Anima*, which Tertullian wrote

Translated by churchlatin.ai, a product of Boyne Archives

when he was infected with the heresy of Montanus, nevertheless possesses historical and scientific validity. Although the words are few, they are expressed in the African style of Tertullian, so acutely and precisely that they are worthy of consideration. He wrote in *De Anima*, number 25: "In the very womb, the infant is slaughtered with necessary cruelty, when, at the time of birth, it is denied passage; the mother is a matricide, unless she is dying." This testimony of Tertullian, which is entirely relevant to our question, cannot deny its historical and scientific validity, but it will become clearer if we consider the context in which Tertullian uttered these words. Tertullian was entirely engaged in refuting the opinion of the Stoic philosophers, who maintained that the soul is not conceived in the womb, nor is it formed and produced with the development of the flesh, but is rather externally impressed upon the already living infant, after birth. In opposition to such a view of the Stoics, and among other arguments that he presents, we find this: "In this matter, no one is a more suitable teacher, judge, or witness than the sex itself. Answer, mothers, and you who are pregnant... your nature is questioned, the faith of your passion is tested, whether you feel any foreign vitality in the fetus, of which the womb palpitates, the sides burn, the entire womb is agitated, and everywhere the region of weight changes: are these movements your joys and your certain security, that you are confident that the infant is living and will live and play...?" Furthermore, "the dead are eaten just as the living are: but who are the dead, unless those who were first alive? But even in the womb, the infant is slaughtered with necessary cruelty, when, at the time of birth, it is denied passage, the mother is a matricide, unless she is dying. And so, among the instruments of the physicians, there is also an instrument by which they are compelled to reveal the secrets, with a tortuous instrument with a cultured ring, with which the members are cut with anxious judgment, with a blunt hook with which the entire fetus is drawn out with violent labor, etc." Thus, according to Tertullian, in the early centuries of the Church (using, of course, more primitive instruments than those of our age, and therefore with greater difficulty in achieving a happy outcome, also considering that the art of surgery was much less developed), surgical operations took place, similar to those that are now used, called craniotomies. Tertullian speaks of this operation as if it were a matter of common knowledge, that the infant is slaughtered. He admits that it is a cruelty, but a necessary one: namely, the necessity that the infant should not, by its own death, become a matricide; it does not matter whether it happens for natural reasons; it is enough that in the act, it denies passage. It is not a dead fetus that is being spoken of, but a living fetus, as the word "slaughtered" indicates, and the entire argument that Tertullian presents is against the Stoics, because this act is done only when the fetus is alive. Therefore, you can see that from the time of Tertullian, the doctrine of the aggressor against life has been invoked in

Translated by churchlatin.ai, a product of Boyne Archives

these cases, not only when it was a question of...

[*Latin ed. p. 558*]

Appendix KIT 558: Concerning the fetus, as they said, not only was it considered unlawful to kill an animated fetus, but also to act upon a living fetus; and the action was considered unlawful for a reason. Do not say that Tertullian, in this passage, transmitted an error of Montanus. For, having examined the heresy of Montanus, if Tertullian had that in mind, he should have said the contrary. There is no reason why this should be said, since he acted against the error of the Stoics, affirming a certain fact known to the Stoics themselves, and adding a reason why it would not be morally reprehensible. Do not say: perhaps Tertullian added that reason out of hatred for the Catholic Church. For it is known that the Fathers of the Church never condemned such an action, which was certainly known to them. Since such an action has never been condemned among the Fathers of the Church, no word about this action as something to be reprehended is found in the sacred canons, as can be seen in the Decree of Gratian; nor in the Decretals of Gregory IX and Boniface VIII, or in subsequent constitutions of the Roman Pontiffs: and yet this action has always been manifestly present, it must be said that the Church has at least tacitly always permitted it, and that the faithful have constantly considered the action itself to be licit. Indeed, the question of this action did not arise among Canonists and Theologians until the sixteenth century, by those very people whom Sánchez cites as being contrary to his opinion; namely, it was raised by Simon of Brixia, who argued that it was licit to give a drug to a pregnant woman to kill the fetus, so that the mother would not die with the living fetus. Having examined the reasons given by Simon of Brixia, as Socinus recounts, such reasons show that this question had not been previously discussed by anyone, although the killing of the fetus in the case we are discussing was manifestly frequent. These are the things that the elder Socinus reports from Simon of Brixia in chapter "Si aliquis de homicidio." "Finally, concerning the aforementioned (voluntary abortion, which has been constantly condemned by the Church), I will add a noteworthy question, which occurs daily in practice. Suppose: an expert physician, attending to a sick and pregnant woman, to whom medical art could not provide help so that she would not die with a living fetus, advised an abortion, and the woman carried out the physician's advice. The question is, is the physician to be held accountable, and what about the woman? Simon of Brixia, in Clement. 1, in the same title, holds that it is so. He does so because abortion is of the kind of evils that are prohibited, 32 q. 2 c. Aliquando et c. Moyses. He does not do so because more things seem to concur, for which at least the woman should be excused: first, the authority of the physician, which is great, 35 distinct, c. "Si quis a medicis:" second, the certainty of the death of both, 1. This most serious authority of Tertullian is also cited by the esteemed Francis

Translated by churchlatin.ai, a product of Boyne Archives

Kenrick, although he does not follow it: and this is the reason why I cited it not in vain in the first article, the esteemed Kenrick having suggested it to me in passing.

[*Latin ed. p. 559*]

Appendix XII 559 « Thirdly, because such an act is performed upon oneself; for although, for the sake of my salvation, it is not permissible for me to harm another without my own defense; nevertheless, for the sake of my salvation, it is permissible for me to harm myself, as, for example, if a wound is incurable and a limb must be amputated with a knife, as the canon states. If a woman performs an act upon herself that would not be permissible in another (here, it should be noted that Simon considers the infant, who denies birth, to be the closest aggressor against the mother's life); fourthly, because by offending no one, she does no harm; fifthly, because she did this solely in order to free herself from death (note the principle transmitted by St. Thomas, which states that nothing prevents a single act from having two effects, one of which is solely in intention, the other following by accident); sixthly, because of two evils, the lesser must be chosen. If, therefore, she is wounded in the aforementioned manner, in ff. ad I. Aquil. (note that this reasoning is presented here rather than the following: If it is not possible to help one person without harming another, it is better to help neither), she also does so because, in homicide, we consider not only the act itself, but also the intention, the place, the time, the cause, and similar things. The question is indeed notable (as Socinus concludes); but for now, I do not wish to decide, because perhaps, with God's help, we will discuss it later. If, however, Simon of Brescia has not alleged any authority to the contrary, other than that: it is done because abortion is of the genus of prohibited evils; if Socinus furthermore calls this question notable, but abstains from judgment; if, finally, Felinus, in the same chapter, if someone mentions this question, does not cite other authors besides Simon and Socinus, concluding but not defining anything himself, this is an indication that this question had not been discussed at that time; especially if it is noted how much the Canonists were concerned with constantly bringing forth authorities, even for the smallest matters, which often annoys the reader. Since, therefore, the act of killing the fetus in the mother's womb, in order to save the mother, either through medicine or through a knife, has been well-known and constant in Christian society, and the Church has never reprobated it, how can it be consistent with this tacit and constant permission of the Church, with the universal belief of the faithful, that opinion of the Moralists, which prevailed in the 17th century, which teaches that this act is inherently evil, never permissible, and is the same as true homicide? And furthermore, how can it be said that such an opinion of the Moralists is to be considered a dogmatic opinion on morals, representing indeed the doctrine of the Catholic Church as certainly pertaining to the deposit of

Translated by churchlatin.ai, a product of Boyne Archives

revealed truths, so that he who denies it should be considered to be close to heresy? Therefore, if you do not wish to say that the entire Church has failed in its duty by negligence in teaching the faithful about this crime; or that they are insip-

[*Latin ed. p. 560*]

560 Appendix XII: Regarding those things which manifestly appear to be unjust, and which have never been seen to be so; those which are the most heinous to speak of: it must be said that the opinion of the Moralists, even if it pleases, is merely an opinion pertaining to moral prudence, which is only as valid as the reasons upon which it is based, and nothing more. But let us now see if the opinion of the Moralists or Canonists is so common that no author whatsoever is to be excepted. I can already say that Tertullian must be excepted, who not only presents his own opinion, but also what was happening in his time, and what was considered honorable concerning that matter. And beginning with the writers on this question in the 16th century, Simon of Brixia must be excepted, who explained the licitness of the act with obvious reasons, which two serious authors, Socinus and Felinus, did not disdain to cite. These two authors, if they refrained from expressing their own opinion, are an indication that they did not see that it was so manifestly permissible. The most learned Theophilus Raynaud, volume 14, *Opuscula moralia*, chapter 9, militates against the common opinion; this author has comprehensively addressed the entire question that we are discussing, and has treated it in detail, and in chapter 9, presenting the reasons of the common opinion, he explains and refutes them, concluding that the killing of a child in the womb of the mother is not contrary to justice, in order to save the mother, when neither the mother nor the child would be saved. The authority of this most learned theologian, whom the celebrated jurist James Pignatelli cites, saying in volume 9, consultation 18, number 23: ''But whatever may be the case regarding this opinion, whether it is permissible or not, as Raynaud discusses in 'De ortu infantium': I say that this authority must be given great weight in comparison with those writers of contrary opinion, who have often done nothing more than to copy what others have written; for Raynaud has treated the question in detail. Therefore, this is already sufficient to say that the opinion contrary to the common one should be stated, not entirely as one with no author excepted, but more accurately, as almost common. But other authors stand in the way. Specifically, the Canonists, who, when dealing with criminal matters, declare pregnant women to be immune from any penalty of the external forum in the case we are discussing. These authors, considering the guilt of homicide when it is a matter of a potion or drug to expel a living fetus, are strict in assigning penalties in the external forum. But conversely, considering the case we are discussing, they either completely absolve the woman from any penalty, or they demand, at most, that the consent of

Translated by churchlatin.ai, a product of Boyne Archives

a doctor or magistrate be added, so that the woman and the doctor are immune from any penalty of the external forum; Farinacius, *oper. crim.*, p. 5, question 122, number 124. This is an argument that these authors, who should impose penalties according to the reason of the crime, have not seen that it is a manifestly capital offense, that formal act of homicide. However, it does not matter if these same authors incidentally mention something about the fact that...

[*Latin ed. p. 561*]

Appendix XII

561. concerning matters within their conscience; for in this matter, if they do not find the guilt of homicide, they should refer themselves to moralists. Thus, for example, *Thesaurus senior decis. Pedemontana?*, decree 12, number 11: "A third case can be proposed in that specific instance, when a potion is given not to cause an abortion, but so that the woman may regain her health, when she is in danger of death due to the fetus within her womb. In this case, although the opinion of some, as Placentius recounts in *De Delictis*, chapter 20, number 6, is that if the fetus is animate, the penalty of homicide should be applied; nevertheless, the opinion of Socinus and Felinus in chapter 'If anyone is concerned with homicide' seems more correct, as when a woman is known to be dying after childbirth, a potion of this kind can be given to her without penalty, provided that the consensus of physicians is present in this matter, as Careri indicates in *Praetio Criminale...* because in this case, not only the danger to the mother herself is anticipated, but also to the child; therefore, of two evils, the lesser should be chosen, and it is more humane to grant life to the mother in this way, who can still bear other children, than to the child, who is always in danger until he reaches the age of procreation. However, the penalty for homicide should still be imposed on the one who committed the act, because this sin is included among the mortal sins by St. Antoninus in *Summa*, chapter S, § 2, near the end." This conclusion was certainly not considered by the author, and would lead to mortal sins against reason and necessity. Similarly, Menochius in *De Arbitr. Iudic*, question 357, number 20: "It is declared secondly that (the Judge) should not proceed against the one who caused the abortion for the sake of the woman's health; for then that person is excused from all penalty, as Marianus Socinus argues in *Quod nulla poena indicenda sit*, because he acted for a lawful purpose; for if the woman had died, the birth would undoubtedly have ceased; therefore, it seems right that he should have lost only one, in order to protect the other." Furthermore, many authors, whom St. Alphonsus calls "grave," oppose this (although contrary to their own intention), invoking the doctrine of the aggressor of life, when it is a question of expelling a fetus that is not yet animate for the sake of the mother's health. And since they consider the fetus to be an aggressor of the mother's life, they say that it can be

Translated by churchlatin.ai, a product of Boyne Archives

lawfully expelled. But those who rightly teach this, limit it illogically to a fetus that is not yet animate: which the theologians of Salamanca also observed in *Tractatus*, 13, on Restitution, chapter 2, number 60, saying: "These reasons also seem to prove that it is permissible to take a potion directly intended to expel a fetus that is already animate," which no one will admit, because even then the fetus attacks and is stronger, and consumes more nourishment, and offends nature more. In short: the life that comes to the fetus, the aggressor, does not take away the aggressor's nature, but increases it. And even a bad humor (as our opponent believes), if it can be called an aggressor of life, does not cease to be so, even if, by hypothesis, a soul is later infused into it. Therefore, these authors, although contrary to *Acta*, volume VII, page 81, number 36.

[*Latin ed. p. 562*]

562 Appendix XII. The proper intention, when logically considered, must be understood to favor the opinion that we maintain. However, there is a great diversity of opinions, although all ultimately lead to the assertion that craniotomy is inherently illicit. This diversity of opinions, since it must have some cause, must be examined to determine its origin. Bossius extensively discusses this diversity of opinions regarding the effects of marriage, volume 1, chapter 9, paragraphs 79 and following. The first opinion holds that it is not licit for a pregnant woman suffering from a serious illness to use direct remedies solely for her own health, if it is reasonably foreseen that this will result in an abortion of the fetus, which, at that time, was not yet considered to be animated; although such remedies would be the only means of saving the mother's life, and are not, by their very nature, intended to cause an abortion. These authors, although they did not consider it to be homicide, because they believed the fetus was not yet animated, nevertheless maintained that it was intrinsically evil to do so! Furthermore, the question arises: can a pregnant woman, facing a moral danger to her life due to a future, life-threatening illness, and with the pregnancy progressing, use remedies that directly and primarily aim at causing an abortion of the fetus, if it is not yet animated, in order to preserve her own life? Some deny this, arguing that it is intrinsically evil; others, on the contrary, affirm it, arguing that it is not apparent why, in the face of a clear danger to the mother's life, the unanimated fetus should be preserved, especially since, with the mother's death, the fetus would also perish. Similarly, can a woman, facing a danger to her life due to a known difficulty in childbirth, licitly procure an abortion of a fetus that is not yet animated, using remedies designed to expel it? Some approve of this, arguing that there is no difference between this case and the previous one, since in both cases the fetus is a threat to the mother's life; others deny it, arguing that since the action is intrinsically evil, it cannot be licit, even for the purpose of saving the mother's life. Furthermore, considering only

Translated by churchlatin.ai, a product of Boyne Archives

the obligations of natural law and justice, is it licit for a pregnant woman suffering from a serious illness to use necessary medicines that directly aim at restoring her health, and not at expelling the fetus, but from which, as a consequence and concurrently, an abortion of the same fetus, which is already animated, is probably foreseen? Some deny this, arguing that the child possesses its own life without injury to the mother; and therefore, if a medicine is such that it harms the child, an injury is done to it, and despite the clear intention of curing the mother, it is the killing of the child; and because evil must not be done that good may come, and because it is evil to kill a child. Others distinguish between purely negative remedies, such as the withdrawal of nourishment or blood, and positive remedies, and they say that the former can be used licitly, but the latter cannot, without incurring injustice and the sin of homicide, since the killing of an innocent person, even if it occurs accidentally, is homicide, which is never licit unless it is the killing of an aggressor. Others generally disagree, although, if the mother...

[*Latin ed. p. 563*]

Appendix XII 563: There is hope that, through this procedure, a living infant might be born, because medicines are directed towards preserving health, and an abortion occurs as an accident and consequence. Another question arises: can a pregnant woman, in order to restore her own health and preserve her own life, justly use medicines that, while tending to restore her health, also tend to cause an abortion of the living fetus? Some deny this, besides those who deny it in the preceding question, and they deny it because of what Saint Ambrose said: that one should not aid one person at the expense of harming another; and since the medicine also tends towards the destruction of the child, the act is not without the guilt of injustice and formal homicide. Others maintain the opposite, offering arguments which they present in support of this view. However, all those who deny the licitness in these questions must clearly deny the licitness in our question, namely, whether it is permissible to use a remedy that directly kills the fetus in order to preserve the mother's life when the mother is dying. But since the reasons they offer are so persuasive, it is to be expected that, if they were presented in the aforementioned questions, they would be refuted by other authors; and if they were to be presented in this question, what authority would they have? But in this final question, whether it is permissible, for the sake of saving the mother's life when she is dying from the impossibility of childbirth, to use a remedy that consists in the killing of the fetus, which would otherwise certainly die with the mother; as Raynaud discusses in the aforementioned passage, it is surprising that the esteemed Bossius attempts to refute Raynaud's arguments, as if one were to say that, by fair means or foul, the reasons presented by Raynaud must be invalid. Bossius seems to have attempted this because, as he expressly states, the

Translated by churchlatin.ai, a product of Boyne Archives

common opinion of theologians affirms "that it is illicit and contrary to justice, and that it is true homicide." He does not consider that this is merely the opinion of moral prudence. And since, although almost all authors have seen with such clear certainty the intrinsic evil of the thing, they nevertheless disagree among themselves on the various questions they consider, so that some see the thing as licit, and others see the same thing as certainly intrinsically evil, I say that, in such clear evidence of the evil of the thing, combined with disagreement of opinions, it must be said that such clear evidence or certainty arises either from a principle that is extraneous to the present question, or from a principle that is applied, not rightly understood, although not extraneous to the present question, or it arises from the application of the same principle, not rightly made, to the cases they are considering. But I will speak of these intrinsic reasons in another article. This concerns the ancient authors. Among the more recent theologians, there is Gury, to whom the aforementioned esteemed journal, *Revue des sciences*, preceded, which our opponent cites, although he contends that the case presented there is different, and that the esteemed author...

[*Latin ed. p. 564*]

564 Appendix XII. Craisson's resolution, and later Gury's repetition of it, both aimed at achieving a result. Therefore, Gury, in his work on the fifth commandment concerning the place of Kosso, dated December 10th, presents the following case: "A pregnant woman, 'Pelagia,' four or five months pregnant, is in extreme danger of life, and it appears that her soul is about to depart. In addition to the regular physician, three others are called to deliberate. After careful consideration, they unanimously decide: If the fetus can be removed with the help of medical art, the fetus will indeed perish, but it is probable that it can be baptized before it expires, and the mother will be saved from certain death. On the other hand, if this is not done, both the mother and the fetus will perish, and the fetus will be deprived of the benefit of baptism. With these considerations, they conclude that an abortion should be induced. The outcome confirmed the doctors' prediction: the fetus was removed and baptized immediately after, and then died, and Pelagia was saved from such great danger." Gury believes that the doctors' decision to directly induce an abortion is permissible, despite the objections of some older theologians, stating: "Many older theologians deny that an abortion is permissible, considering it as the direct killing of the fetus. However, it seems correct, with the more recent doctors, in the case where only an acceleration of childbirth is involved. In that case, there is no direct killing of the fetus, which is simply removed from the place where it cannot live, and placed in another place where it can more easily produce life." Thus, Gury, holding such a view, opposes many older theologians, and is therefore among the more recent theologians who contradict the common opinion. Do not say that this is

Translated by churchlatin.ai, a product of Boyne Archives

only about accelerating childbirth: for such an acceleration of childbirth in this case means nothing other than accelerating the death of the same fetus through medicines directly intended for that purpose; which the common opinion absolutely denies is permissible. Nor is the argument of any importance if it is considered by itself, which the opponent objects to, arguing that there is no direct killing of the fetus, which is simply removed from the place where it cannot live and placed in another place where it can more easily produce life. If this argument is considered by itself, with the qualification made by the law that the mother has a right to life, it is of absolutely no importance. For how could you, by force, remove someone who is quietly dying in their own bed and within their own room, and cast them into a nearby river? Would that not be murder? Nor is the nearby river a suitable place; for you would bring the immature fetus, violently expelled from the womb, into the open air, so lethally, that it would not only be unable to produce life there, but would be condemned to a violent death, a most grievous injustice. Finally, Father Anthony Ballerini, in his notes on Gury's moral work, in the treatise on the commandments of the Decalogue, chapter 2, article 3, section 2, number 403, regarding the proposition: "It is not permissible, when a woman is pregnant, to kill the fetus..."

[*Latin ed. p. 565*]

Appendix KU 565: "to free the mother from death": This notes: "This resolution must also be understood in the sense explained in the preceding note, namely, that it is not permissible to directly will the death of the child. For if, otherwise, the death of both the mother and the child is certain, the mother is in no way obligated to undergo the death which does not save the child from simultaneous death. And to this pertains what the theologians of Salamanca, Tract. 13, chap. 2, no. 60, attribute to more than twenty doctors, namely, that the fetus, under certain circumstances, is to be considered like an innocent aggressor, whose death, according to the teaching of St. Thomas..., follows only indirectly. And these are sufficient reasons for our opponent to judge whether I have wrongly called the contrary opinion a commonly held one, whether there are among the ancient and modern theologians those who contradict this common opinion, and whether we are dealing with a theological opinion to which, if one opposes it, one falls under the censure of Cani. Regarding the rest, in another article. FROM THE MINUTES IN THE MANNER OF CONSISTORIAL SESSIONS OF OUR HOLY FATHER POPE PIUS IX, BY DIVINE PROVIDENCE, ENCYCLICAL LETTER TO THE CARDINALS, ARCHBISHOPS, AND BISHOPS OF THE AUSTRIAN EMPIRE. TO OUR BELOVED SONS, THE CARDINALS OF THE HOLY ROMAN CHURCH, AND TO OUR VENERABLE BROTHERS, THE ARCHBISHOPS AND BISHOPS OF THE AUSTRIAN EMPIRE. PIUS PP. IX. GREETINGS AND APOSTOLIC BLESSINGS. Scarcely had the letters been published on the 24th of November of the past year, announcing

Translated by churchlatin.ai, a product of Boyne Archives

the immense persecution against the Church of God, especially in Prussia and Switzerland, when new anxieties arose for Us, in addition to the other injuries threatening the same.

[*Latin ed. p. 566*]

Letter 566 To the Church, which, like the Bride, is made similar to the Divine Spouse, it can now rightly be said: "They have added to the pain of my wounds." 1 We are all the more grieved by these injuries because they are inflicted by the government of the Austrian nation, which has long been most closely connected to the Holy See and, in times of Catholic faith, has zealously defended this faith. Indeed, for some years now, certain laws and ordinances have been enacted in this Empire that are plainly contrary to the most sacred rights of the Church and to solemn agreements, which, in Our address to the Venerable Brothers, Cardinals of the Holy Roman Church, given on June 22, 1868, We were obliged to condemn and declare invalid, according to the duty of Our office. Now, however, new laws are being proposed to the public assemblies of the Empire for consideration and approval, which manifestly aim to reduce the Catholic Church to the most pernicious servitude under the authority of the civil power, completely contrary to the divine institution of our Lord Jesus Christ. For the Creator and Redeemer of mankind founded the Church as His visible kingdom on earth, not only endowed with the supernatural charism of an infallible magistrery for transmitting sacred doctrine, and with the most holy priesthood for promoting divine worship and the sanctification of souls through sacrifice and sacraments, but also with its own and full power of governance, to enact laws, to administer justice, and to apply coercion for all that pertains to the salvation of souls, "which pertain to the proper purpose of the Kingdom of God on earth." Since this supernatural power of ecclesiastical governance, by the very institution of Jesus Christ, is entirely distinct and independent from political power; therefore, the Kingdom of God on earth is a perfect society, which is contained and governed by its own laws, its own rights, its own officials, who watch over it as if they were about to give an account for souls, not civil. * Psalm 68, 27.

[*Latin ed. p. 567*]

To the Directors of the Society, and especially to the Principal, 567. Pastors of Jesus Christ, from whom pastors and teachers have been given, no earthly power has authority in the exercise of the ministry of salvation. Antistites are subject to the duty of governing, so that, as all the faithful, according to the admonition of the Apostle, have the office of obeying, and therefore it is a most sacred right for Catholics not to be hindered in this divinely appointed office, but to be able to follow the doctrine, discipline, and laws of the Church, without impediment from civil government. Indeed, We, with you, Our Beloved Sons and Venerable Brothers, understand how

Translated by churchlatin.ai, a product of Boyne Archives

grave a violation of this divine constitution of the Church, how intolerable a subversion of the rights of the Apostolic Antistites, and of the people themselves, would it be if the sacred Catholic laws, concerning which matters are now being discussed in the Austrian Assemblies, were to be contained and openly proclaimed. For, according to those same laws, the Church, in almost all matters and actions, is subject to the supreme civil authority, as is explained in the exposition of civil laws, which is openly held to be a kind of empire; the authority of Christ is considered to be subject to the authority of Jesus, and in its place, it establishes a sense of principle. Hence, it is also clearly declared that civil government, from its supreme power, ought to be able to enact laws concerning ecclesiastical matters, just as it governs civil matters, since the Church, like other citizens and private societies existing within the boundaries of the Empire, is subject to its vigilance. Therefore, civil government arrogates to itself the authority to judge the rights and the supreme governance of the Catholic Church, which it exercises partly through itself, through its own laws and actions, and partly through ecclesiastical persons. Thus, the Church, for the work of ministry and for the edification of the Body of Christ divinely instituted, is subject to the judgment of the civil authority. "Cf. Heb. 13, 17. Eph. 4, 11, 1. 1 Pet. 5, 2."

[*Latin ed. p. 568*]

Encyclical Letter 568, and the authority of the temporal empire will be restored. Against such usurpations of sacred things for the sake of law and Catholic truth, Ambrose responds: "It is alleged that it is permissible for the emperor to do all things, that he himself possesses all power. I answer: Do not burden yourself with the thought that you have any imperial right in things that are divine. Do not exalt yourself, but be subject to God. It is written: 'What is Caesar's, render to Caesar; and what is God's, render to God.' Palaces belong to the emperor, the Church belongs to the priest." 1. As for the laws themselves, to which the aforementioned exposition of motives is prefixed, although they may perhaps seem to exhibit some degree of moderation when compared to the most recent Prussian laws, in reality they are of the same nature and character, and they prepare the same ruin for the Catholic Church in the Austrian dominion. We do not wish to pursue each and every chapter of these laws; but we cannot, in good conscience, pass over in silence the most grievous injury that is inferred from the very proposition of these laws, to ourselves and to this Apostolic See, and no less to you, our beloved sons and venerable brothers, and to the entire Catholic population of that Empire. Indeed, the agreement concluded between Us in the year 1855, and solemnly guaranteed by the most serene Catholic Emperor, and promulgated throughout the entire Empire as a public law, is now proposed to the Imperial Diet to be declared completely abrogated and invalid, and that without any prior discussion with this Apostolic See,

Translated by churchlatin.ai, a product of Boyne Archives

indeed, and with our expostulations completely disregarded. Such things, indeed, could not even have been attempted in those times when public faith still held sway; but now, in this most grievous condition of affairs, they are attempted and carried out. Against this violation of the solemn agreement, before you, our beloved sons and venerable brothers, we again protest; and we denounce and condemn with far greater anguish of heart the injury inflicted upon the entire Church, as well as this abrogation of the Concordat and...

[*Latin ed. p. 569*]

This letter pertains to matters connected with the definitions of the Encyclical *leges* 569, concerning the revealed and excused doctrine published by the presumptuous Oecumenical Council of Vatican, and these very Catholic dogmas are impiously called innovations and changes to the faith and constitution of the Catholic Church. 1. Indeed, if there are those within the Austrian jurisdiction who reject the Catholic faith with such nefarious comments, they retain and profess it, along with the glorious Avis [presumably a reference to a specific group or family] and the entire imperial house; the most august Prince retains and professes it, and the vast majority of the people, to whom these laws are presented, retain it, despite being subjected to such comments. Thus, without our knowledge or consent, a solemn agreement, which we celebrated with the most serene Emperor, for the sake of the salvation of souls and the benefits of the civil republic, is broken; a certain new form of law is introduced, and a new power is claimed by the civil government, so that it may, at its own discretion, establish and decree whatever it sees fit concerning spiritual and ecclesiastical matters. This is to the effect that those things which are now requested by the laws, namely, the inviolable liberty of the Church in the care of souls, in the governance of the faithful, in the religious instruction of the people and the clergy, in the life required for evangelical perfection, in the administration and property, and even the very goods themselves, are safeguarded; on the contrary, perversion is fostered, and the Church is implicitly bound by harmful connections, leading to the defection from the Catholic faith, the coalition of sects, and a conspiracy against the true Christian faith, all supported by the protection of the laws. It would certainly be beneficial for us to remember what evils might be feared if laws of this kind are enacted; but truly, your prudence, beloved sons and venerable brothers, cannot fail to recognize this. For almost all ecclesiastical offices and benefices, indeed, even the duties of pastoral ministry, will become so subject to civil authority that sacred prelates, if they were to acquiesce in these new rights (may it be so), 1 *Expos. Mot.*, p. 25.

[*Latin ed. p. 570*]

Encyclical Letter 570: Regarding the governance of dioceses, whereby

Translated by churchlatin.ai, a product of Boyne Archives

those districts would be obligated to render accounts to God, it is a most salutary decree of the Church that those who are compelled to administer and regulate the affairs of the state should adhere to this principle, and that they should act according to it. What, moreover, should be expected from those petitions which are presented concerning the recognition of religious orders? Indeed, the pernicious influence and hostile intent of these are so evident that no one can fail to understand that they have been devised and prepared with the intention of corrupting and destroying religious families. Finally, the loss of temporal goods which is imminent is so great that it scarcely differs from open confiscation and spoliation. If, indeed, after offensive laws have been enacted, and the civil government, leading what it deems to be right and proper, shall impose such burdens, it will reduce, divide, bestow, and levy such miserable taxes and possessions, and the use thereof, that it will be considered not for the honor of the Church, but for its mockery and for the concealment of injustice. Since these are the laws about which discussion takes place in the public assemblies of the Austrian Empire, and since they are founded on the principles which we have demonstrated, it is clear to you, beloved sons and venerable brothers, the imminent dangers which threaten the flocks entrusted to your care. For the unity and peace of the Church are called into question, and it is sought to deprive it of that freedom which Saint Thomas of Canterbury knowingly declared to be: "the soul of the Church, without which it neither flourishes nor is strong against those who seek to possess the inheritance of the sanctuary of God." 1 Indeed, even before this, another defender of that same freedom, Saint Anselm, explained this sentiment with these words: "God loves nothing more in this world than the freedom of His Church; those who wish to serve Him, but not to rule over Him, are undoubtedly declared to be adversaries of God: He wishes His bride to be free, 2 not a slave." Therefore, with your pastoral concern, r 1 St. Thomas of Canterbury, epistle 75, to the Bishops of England. St. Anselm, epistle 9 to King Baldwin.

[*Latin ed. p. 571*]

Encyclical Letter 571, and with the zeal with which you are inflamed for the house of God, we are more and more aroused and incited, so that you may strive to remove the danger that is present. Take courage, with which you may conduct a contest worthy of your virtue. For we are certain that you will be neither in spirit nor in strength inferior to those Venerable Brothers, who elsewhere, amidst the most grievous vexations, for this very freedom of the Church, have become a spectacle of reproaches and tribulations, not only joyfully accepting the plundering of their goods, but also enduring the struggle of sufferings in chains. Moreover, all hope is placed not in our own power, but in the power of God; for it is for the sake of God that this is done, who, through a never-failing oracle, forewarned and established us in this way: "These things I have spoken to you, that

Translated by churchlatin.ai, a product of Boyne Archives

in me you may have peace. In the world you shall have distress. But have confidence. I have overcome the world." 2 Therefore, we, who, for the sake of our Apostolic office, are appointed leaders in this varied and atrocious war against the Church, strengthened by divine grace, and aware of our own weakness, announce and promise to you what the holy Martyr of Cantuariensis once expressed, words which are most fitting for this age and danger: "The cause which our enemies exercise against us is between them and God, because we seek nothing from them except that which God has left to His Church by His eternal testament, for it in the flesh He made immortal. Therefore, arise with us in faith and charity to help the Church, and with the authority and prudence given to you, confront those men, for whom the abundance of earthly successes is not enough, if the Church of God enjoys freedom." 3 We trust in you abundantly; and in us, you may be certain, the cause of God. For we believe that it is better to incur temporal death, than to perpetuate the torments of miserable servitude. For the outcome of this controversy will be drawn to the consequences of the future, so that the Church, in its time, may either lament in perpetual sorrows, which may God forbid, or may rejoice in eternal freedom."

1 Heb. 10, 32 seq.

2 John 16, 33.

3 St. Thomas, Canterbury, epistle 33.

[*Latin ed. p. 572*]

Epistle 572, Encyclical:

Since it must be brought to your attention that, given the dangers that are present, nothing will be more useful and opportune than, after having received counsel, to seek out more suitable means, and to deliberate as to which reasons and paths will lead you most certainly and effectively to achieve the intended goal. While the rights of the Church are being attacked, it is your duty to oppose those who advance against her, like a wall for the house of Israel. Indeed, the more concordant and united the efforts and endeavors of each individual are, the stronger the defense and the more effective the protection will be; and the more carefully and deliberately a plan of action is established, prepared for the various necessities that may arise, the more readily it can be applied. Therefore, we urge you again and again to convene together as soon as possible, to share your counsel, and to establish a certain standard, approved by all, by which, in accordance with the nature of your office, you may repel, with a united front, the evils that are pressing in, and bravely defend the freedom of the Church. We have considered it necessary to remind you of this, lest we seem to be neglecting our duty in the face of such a grave matter. For we are persuaded that, even without our exhortations, you would have undertaken these things of your own accord. Otherwise, we would have almost lost all hope that God might avert, by some other means, the calamities that

Translated by churchlatin.ai, a product of Boyne Archives

are being threatened. Indeed, piety and religion move us to hope, and the letter of Joseph, most dear to us in Christ, Francis, today, on the very day of the Emperor, urges us to pray that he may never, as King, deliver the Church into dishonorable servitude within his vast dominion, and that the Catholic citizens subject to his rule may not be brought into great distress. Since many are conspiring against the Church, and every delay is fraught with peril, you must by no means become inactive. May God guide your deliberations, and may His powerful protection assist you, so that you may successfully establish and accomplish what is most important for the glory of His Name and the salvation of souls. As a pledge of this heavenly protection and of our most sincere benevolence, we impart to you all, our beloved sons, the Apostolic Blessing.

[*Latin ed. p. 573*]

To the Most Reverend Brothers, and also to the Clergy and faithful entrusted to your care, we impart our paternal blessings. Given in Rome, at St. Peter's, on the seventh day of March, in the year of Our Lord 1874, in the twenty-eighth year of Our Pontificate. PIUS PP. X. FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT, ELECTION. On June 22nd and August 17th, 1872. Summary of the Case. In a certain diocese of America, some canons of the Cathedral Church, without the knowledge of the Bishop and Chapter, sent a petition to the Holy Congregation, proposing two questions, in which they seemed to impugn the authenticity of the responses. They inquired: 1) Whether the name of the elector can be expressed in chapter elections which are held secretly or by scrutiny? 2) And, if not, whether an election made in this manner is considered null? Upon receiving this petition, it was determined that the Ordinary should, after hearing the Chapter, report on the custom previously observed, and that a copy of the relevant constitutions should be sent to the Holy Congregation, so that it might understand the mind of the Ordinary and be assured of the consequences that the petitioners claimed would result from the resolution of these doubts. The Archbishop, acting in accordance with these instructions, reported on July 18th: "The statutes of the Metropolitan Church prescribe no special rule for conducting chapter elections... The aforementioned elections are held by means of ballots, the scrutiny of which is performed by the Archbishop himself, if he is present, or by whomsoever..."

[*Latin ed. p. 574*]

Electionis 574: "The chapter president presides, completing the process entirely in secret, and declares the one who obtains the majority of votes to be duly elected; nor does he reveal the name of any of the electors, which cannot easily be ascertained solely from a ballot, in which the name is concealed. Therefore, I found that nothing was done incorrectly in the aforementioned elections; but I will briefly explain what may perhaps give the

Translated by churchlatin.ai, a product of Boyne Archives

speakers cause to direct prayers and questions to this Sacred Congregation. In the year 1844, one of my predecessors received a rescript by which it was decreed that *scopi* should prevail. In that year, in some recent elections, when the votes were equal, the place of *electa* was determined. However, when that equality of votes recurred, I had to follow the aforementioned rescript, which my predecessor had made known to the chapter by his decree, and therefore I made it clear to all the chapter members for which person I had voted, so that she might be duly and canonically elected by all, which some, I know not how, took offense at. I also know for certain that my predecessors had a custom whereby, when the chapter was convened for the purpose of an election, and they were absent, their vote was given by the chapter members, or by a priest, in a sealed ballot, which they sent to the chapter president: when the president received and opened it, he could ascertain for which person the bishop had voted. I myself also followed this custom, which, as it is not contrary to law or reason, I knew displeased some there. At the same time, the Most Reverend Prelate added a document from the Chapter Commission to his letter, which is in agreement with the bishop. From this, we have only drawn certain conclusions that are worthy of note. The Chapter Commission believes that the recent elections of the Regular Canon of *R R.* and the Penitentiary, which were held with doubts raised, concerned the fact that, when the bishop was absent, he sent his vote in a sealed ballot, written and signed by his own hand, in which the name of the elector was clearly visible."

[*Latin ed. p. 575*]

Regarding the election process: It is also noteworthy that in 575 elections of the aforementioned Penitentiaries, it occurred that, when the scrutiny of votes revealed a tie, the vote of the Roman Bishop prevailed, thereby determining the election. "Furthermore, the Capitular Commission maintains that, in cases where similar circumstances were presented with proposed doubts, the elections of the Archdeacon, Cantor, Master of the school, sixth canon, and second prebendary, recently completed, were accompanied by such circumstances. In these cases as well, the Bishop had cast his vote in the same manner."

Concerning the custom in force, the Capitular Commission stated: "When the regions of India were under Spanish domination, the King of Spain, by right derived from an Apostolic concession, presented candidates for all and each benefice, and no other method was then employed in the canonical elections to provide for vacancies in this Cathedral Church, except that which he, as they say, used for the canons, namely, through presentation, and which was carried out through a scrutiny according to the form of the Council of Lateran III, chapter 42, concerning elections. However, when the Indians were emancipated from the dominion of the King of Spain, the patronage which he had exercised in the collation of

Translated by churchlatin.ai, a product of Boyne Archives

benefices immediately ceased, and from that time until the present, the form of secret scrutiny, which had previously been exclusively used in the elections of canons, has been maintained for other benefices, with Bishops sometimes being invited to give their vote upon vacancies, and to submit it in a sealed envelope. It has also been ascertained from the acts of the Chapter that, on occasion, some Capitulars who were absent often appointed colleagues to cast their votes in their name, as was done in the aforementioned elections. This has indeed been the custom that has prevailed in this Cathedral Church for many years."

[*Latin ed. p. 576*]

Election, 576. A concise discussion. RIGHTS PRESENTED IN FAVOR OF SECRET ELECTIONS. Among the reasons which the Canons alleged, the following points were found to be relevant in support of secret elections. They distinguished, namely, between public and secret elections, and, having passed over the public elections, about which there is no discussion here, they observed that the nature of secret elections is so closely related to secret votes that, if even one vote is not secret, the election itself is null. To prove this, they cited the well-known Constitution of the Council of Lateran, which is found in chapter 42, entitled "Concerning Expulsions," where Innocent III, among other things, decreed: "We decree that when an election is to be held in the presence of all those who ought and wish and are able to conveniently attend, three of the college, worthy of faith, shall be chosen... to diligently inquire into the matters to be considered and to confirm the election by other means, and in this way, the votes shall be taken." The Council of Trent, in session 23, chapter 7, concerning Regular Canons, also states a similar principle, prescribing under a decree that the elections shall be made by secret votes, so that the names of those who are voting are never made public. Speaking of these legal provisions, Ferraris, in Bibliotheca Canonica, under the word "electio," article 4, number 33, along with other authors, states: "However, it would cease to be secret, and therefore the election would not be valid, even if only one person were to reveal his vote, allowing the Chapter, because in this way the entire Chapter would violate the disposition of the Council, which decrees that the elections must be made by secret votes and that the names of those who are voting must never be made public... thus, it would cease to be secret, and there would be no election if those who are voting were to use a ballot marked with some obvious sign, so that it would be known to the scrutineers, or to one of them, that those voters have chosen the person named on the ballot; and therefore, such a person would be considered elected, and the Prelature would be obliged to inform him of this, or he

Translated by churchlatin.ai, a product of Boyne Archives

would be obliged to request it from the Holy See."

[*Latin ed. p. 577*]

"The confirmation of the election with a dispensation of 577." However, this point is addressed, since both the Archbishop's document was recognized for its external form, and furthermore, by the signature on the name. They stated that it could not be opposed, and in the year 1844, they issued a resolution of this tenor: S. C. C. "It should be written to the Bishop who makes the decree, that by virtue of which, in the future, Bishops shall have the vote, so that their vote may prevail in elections and in cases of equal suffrage." They argued that this had nothing in common with the present controversy; that it is one thing for a Bishop to publicly announce his vote in a case of equal suffrage, and another to do so arbitrarily before the election, which would happen if he were to send it in writing to the Chapter: for such a procedure would violate the freedom of the electors, and is expressly reprobated in chapter 46, § final, concerning elections, in 6: "An absentee, 'even though no one from the college wishes to be his representative, 'nor may he himself appoint an outsider, unwillingly by the Chapter, 'be able in any way to express his vote in writing, 'which must not be done before the scrutiny, but only secretly and 'individually within the scrutiny itself." Furthermore, certain Canonists presented arguments, by which they attempted to exclude the Archbishop's vote from prevailing in cases of equal suffrage, based on the customs of that region and on certain facts; but these were of little importance.

THOSE POINTS WHICH HAVE BEEN RAISED CONCERNING THE VALIDITY OF THE ELECTION. Those who supported the election in the Chapter began by citing the very provisions of the law, which were adduced to the contrary. They observed, first, the aforementioned chapter 42 concerning elections, which prescribes the form of elections under penalty of nullity, does not extend to provisions concerning the election of Benefices and Canonries, of Prelates, whether secular or regular, who, as new pastors and spouses, are to be received by the Churches; which they confirm from the Glossa to the words "widowed": in chapter "By this, it seems that it speaks only of 'elections of Prelates, that is, of Bishops, not of Canons." Acts, volume VII, page 81, line 37.

[*Latin ed. p. 578*]

Electionis 578 « But shall we extend this constitution to all « dignities, even to those not cathedral, and to plebeian offices, and « to other dignities which have prelates in collegiate churches? It does not seem so, since the churches through these dignities « are not considered widowed, since they have a bishop. It can « be said that it should not be extended to other dignities, but only « to episcopal sees and regular prelatures ». To this, De Luca agrees, who in Canonicis, book 2, no. 4, both positively and negatively

Translated by churchlatin.ai, a product of Boyne Archives

declares that the aforementioned form does not apply to the provision or nomination to canonries and other benefices, adding « for we would say 'election' in our way « of speaking, but it is not so ». And the Sacred Rota in decisions 286, part 6, and decision 219, part g. Furthermore, the Holy Council of Trent in session 25, chapter 6, regarding the sanction of regulations which prescribe: « by the action of Superiors, whether of any kind, « and others concerning Officials, and « In the election of Abbots of monasteries, Generals, and Abbesses, « and other superiors, so that all may be done properly and without any « fraud, in « all the aforementioned, the Holy Synod commands that each « individual elector must cast his vote openly, and that the names « shall never be disclosed afterwards, so that they may be published. Nor shall Abbots, Priors, or « any others who hold office be appointed « to carry out the election « truly, or if any votes against this decree or the votes of the absent « have been cast, the election is invalid, and those who « will supplement it. If anyone elected « has allowed himself to be created Provincial, Abbot, or Prior, « then he shall be deemed incapable « of holding all offices in the religious order »: it is noted that Cardinal De Luca in notes to S. C. Trid., book 57, no. 1, such a sanction for Regular superiors « is introduced to restrict « elections of Superiors, or Decrees, since he wrote there of prelates, which was not a « provision of common law, because... the form of election, through the « requirement of secrecy, is prescribed only in common law to be observed.

[*Latin ed. p. 579*]

Electionis 579: "It is when the matter concerns the election of a Bishop, or another Prelate, so that the Church remains widowed, that is to say, a formal election to a permanent office. And this is expressed in clear words by St. [Thomas Aquinas] in the title, not in other acts." We also read in the decision 210, n. c, part. c, recent, "that no special form is required in the election to a canonry, but that the consent of the chapter, given in any way, suffices, if the expression of the will is valid, whether by words or by deeds, even without solemnities." To the objection in chapter 40, section 6, the response was that the vote of a chapter member absent, expressed in writing in those matters that necessarily require the form of secret scrutiny, is indeed excluded, but not the vote of the Bishop, who, not as president or member of the chapter, but as a person external to the chapter and distinct from it, has cast his vote; see Card. [Gennari], n. 3 and following. The Prelate, acting as a person distinct from the chapter, should publicly express his vote. Furthermore, the rescript of the Sacred Congregation of 1744 imposes no temporal or local limitations on the Bishop in casting his vote. On June 22, 1872, after these matters had been presented to the Holy Father, the response of the Sacred Congregation was given, indicating that the cause was postponed to the first meeting after the next, and that the resolution would be announced on that day. The cause was not postponed

Translated by churchlatin.ai, a product of Boyne Archives

to the immediate elections, but to those that would follow.

PROCEEDING WITH THE CAUSE. When this controversy was again discussed on August 17 of the same year, 1872, it was more clearly emphasized that the prescribed form strictly applies only to those major benefices, from whose vacancy the pastors of the Church remain widowed, as the Canonists teach throughout, under the title "de eieci"; but in the case of minor benefices that become vacant, in which the Church is not considered widowed,

[*Latin ed. p. 580*]

The place of election is not subject to the highest legal authorities; Fenstuel, in title number [illegible], writing properly concerning perfect and imperfect elections, observes the following, number 112: "Furthermore, in the elections of 'inferiors,' such as Canons of Cathedrals, the 'forma' [liturgical form] is permitted, as is stated in chapter [illegible]. Because the prescribed regulations are correctly observed; however, this rigor must not be observed in their election: for it is not necessarily considered that the church is widowed by their death, as all believe, since they do not have such a general jurisdiction as an Abbot, and the true spouse of the church, namely the Bishop, still lives. Therefore, it is sufficient for the validity of such elections if the Chapter, acting collegially, elects someone otherwise capable by a majority of votes, however they express their consent; indeed, even individual consents are sufficient, provided they are given in the Chapter." The same is taught by Fagnanus, Passerinus, Pirhing, and others, provided that a legitimate custom commonly introduces the 'forma' of the aforementioned election. Furthermore, it has been observed that in the matter of such a custom, it does not necessarily follow that a Chapter and Archbishop must hold elections for vacant Canonries through secret ballots; and this is commonly practiced in well-ordered Chapters, although secret ballots are not strictly required by law. Scarfantonius describes a certain mode of election in this way, as written in "Animadversiones," part [illegible], title 4, 2, chapter 6: "By means of ballots subscribed and sealed, so that the names of those electing are expressed only by the name of the one they wish to elect... then they are placed in a box, from which they are drawn by the Deputies, and after a diligent examination, the elected is announced by the majority of votes... and if any Canon has dared to openly reveal his vote, he must be rebuked by the Prefect of the Chapter, but for that occasion, he must be deprived of the right to give a secret ballot." Cf. also Bouix, "Tractatus de Capitul.," page i, section 4, chapter 8, number 8. These indeed concern the customs of Chapters; but since the matter concerned an Archbishop, who does not...

[*Latin ed. p. 581*]

Regarding the matter of elections, section 581 of the chapter stipulated

Translated by churchlatin.ai, a product of Boyne Archives

that [a certain individual] should give their vote, but it was asserted that, as a person external to the chapter, they were not bound by the laws of the chapter. Moreover, when, through a decree issued in the year 1844, the Archbishop's vote was to prevail in the event of equal votes, it was noted that it was absolutely necessary that, in the event of an equality of votes, the Archbishop's vote should be made known to all electors. These and other observations were again presented to the Holy See for resolution. Doubts: I. "Can the name of the elector be expressed in chapter elections, which are held in secret or by means of a ballot?" And to the extent that the answer is negative. II. "Do such elections fall under nullity?" And to the extent that the answer is affirmative. III. "Is the same to be said of elections in which the Bishop manifests his vote?" RESOLUTION. The Holy Congregation, having knowledge of the matter concerning the elections held on August 17, 1872, decided to respond as follows: To I: It will be provided in section three. To II: As explained above, negatively. To III: Votes must be given by the Archbishop in secret ballots. After an equality of votes has emerged, the Archbishop's vote must be made manifest. THEREFORE, THE FOLLOWING ARE DEDUCED: I. Rigor cites Chapter 42 concerning Elections, which applies only when it is a question of the election of a Pastor or Prelate to a canonry or other chapter benefits and offices, in which the interests of the Church are concerned, and not in the case of a provision where any kind of chapter consent is given. II. It is, however, fitting that such an election be carried out by secret ballots or provisions.

[*Latin ed. p. 582*]

Electionis 582 III. In the election of Superiors, whether of Abbots of monasteries, or of other officials and generals, of Abbesses and other superiors, the procedure must be carried out through secret ballots, under penalty of nullity, as stated in the Council of Trent, Session 25, Chapter 6, concerning Religious Orders, on January 25, 1873. Summary of the case. Albert L., from Gallia, in the year 1867, became involved in illicit affections with a woman named Armanda R., of the same nation. He had been exceeding the bounds of propriety for nearly two years; she had been doing so for more than seven. I shall pass over all mention of the woman's morals, lest I be compelled to recount matters of disgrace. With a heavy heart, Albert's parents bore the misfortune of their son, and therefore they spared no effort to remove the young man from this deplorable habit. At one time, they remitted the debt owed for Armanda, so that no pretext might be given to the woman; at another, they negotiated with her through intermediaries regarding the freedom of their son. It is said that they expended a truly remarkable sum of one hundred and fifty thousand livres in order to achieve their goal: for the woman, seeing herself appeased with money and prayers, seemed to need Albert less, and withdrew her opposition; but once the price of redemption was paid,

Translated by churchlatin.ai, a product of Boyne Archives

she would again demand her due. Finally, exhausted by the seizure of his assets, the parents' indignation, and the shame of his life, Albert seemed to embrace a better course of action, and, with the encouragement of his mother, he set out for the American region, arriving there on March 10, in the year 1868. This journey undertaken seems to have been with the intention that, through constant travel through the various provinces of the American region, Albert might...

[*Latin ed. p. 583*]

583. He would recall the purpose of marriage and abandon the cares of obscene love. In reality, however, he did not remain in one place, but traveled now to New York, now to Baltimore, now to the Canadian province, now to the province of New Orleans, and even considered a journey to Japan through the southern regions of America, but abandoned this plan because a member of his company was lacking. Meanwhile, Armanda began to tempt young men, promising herself that she would approach them, never mentioning the matter of marriage, until just a few days before Albert's arrival in the state of New York. She arrived there on August 11th, and three days later, in that same city, before a priest, the pastor of the Church of Saint Vincent de Paul, the marriage was celebrated, with witnesses, a carpenter, and a young man fourteen years of age. Both remained as husband and wife in the state of New York until October. Afterwards, Albert returned to France, and after returning to Armanda, they lived together for several months before visiting their paternal homes, and finally, embracing the intention of dissolving the marriage, he presented a petition to the Holy See, requesting that the marriage be declared null. Furthermore, his father easily obtained the declaration of nullity according to civil law in France. The Secretary of the Congregation of the Council gave instructions that investigations be conducted, both in New York and in the Diocese of Gallia. Before the New York court, the appointed Vicar, under oath, declared that he knew absolutely nothing about whether Albert and Armanda had acquired a domicile or quasi-domicile in New York, or whether they had come there for the purpose of celebrating the marriage; however, he had been informed by the pastor of the Church of Saint Vincent de Paul that Albert and Armanda had acquired a quasi-domicile there, and that, at the urging of the same pastor, he had granted a dispensation from the publications, in order to protect the honor of the woman who was living maritally with Albert. Expressing his opinion, he declared that the marriage appeared to him to be both lawful and valid.

[*Latin ed. p. 584*]

584. After a formal examination before the Church of St. Vincent de Paul, the Rector, among other things, under oath, testified: "That the priests who serve in that church have the authority from the Ordinary to join in mar-

Translated by churchlatin.ai, a product of Boyne Archives

riage those who come from France, provided that they conform to the laws of ecclesiastical discipline in force there; that the prescriptions of the Council of Trent, namely, that a parish priest and witnesses are required, do not apply there; and that the Council of Trent was never publicly promulgated in the Archdiocese of New York, but only the consent of the contracting parties is required for the validity of the marriage." He added that he did not remember whether he had received any documents from Albert, but even if he had not received them, he did not assume that he had not received them, because he judged it appropriate to overlook them in order to draw two souls away from the path of perdition. Finally, he testifies that he found nothing in Albert's words that indicated that he had sought to enter into marriage in the city of New York, in violation of the law of clandestine marriages, although this law imposes no obligation where the Council of Trent has not been promulgated, and that in order to act more safely, he had Albert and Armanda swear never to appeal to the Civil Tribunal to have the marriage contract annulled." With these things established, the witnesses for the marriage testified to the soundness of mind and body with which Albert was endowed. Before the Tribunal in France, a man was examined first, and among other things, he was asked whether Albert had resided permanently in New York or had traveled to other parts of America. He replied that after having stayed there for fifteen days, he traveled here and there to visit all the regions of New York and its surroundings. He stated that Albert had no fixed residence there, having returned there only for two or three days at most, unaware of which parish he would be staying in. — When asked whether he had considered that the Rector of the church of St. Vincent was previously a parish priest, he answered under oath: "Never did I consider it, and therefore I only consulted the Rector of that church, knowing that it would be easier for me to have the marriage performed through him."

[*Latin ed. p. 585*]

585. Concerning the commencement of the marriage. – And being questioned again, whether he and Armanda had considered it necessary to obtain the assistance of their own parish priest for the marriage, he replied that he had been ignorant of the necessity of all this assistance, and that he had known nothing of the promulgation of the Council of Trent. When the woman was questioned and asked whether she had requested permission from her own parish priest in order to enter into the marriage in the city of Neo-eboracensi, she replied that she had not considered it necessary to obtain any permission. – And when questioned about the promulgation of the Council of Trent and the necessity of the own parish priest, she stated that she knew that it was easier to contract a marriage in the city of Neo-eboracensi than in her own diocese, and that she had not consulted the Rector of St. Vincent de Paul, as her parish priest and confessor, unaware

Translated by churchlatin.ai, a product of Boyne Archives

of what the term "own parish priest" completely signifies. Finally, she admitted that both she and Albert had intended to put off the marriage in that city. After these statements, a large number of witnesses appeared before the same court, some of whom knew other things, and recounted many details. With these things having been presented, the cause was examined through the formula of doubt, which is found at the end. A concise summary of the arguments. ARGUMENTS IN FAVOR OF ALBERT. Those who argue in favor of Albert first mention what is most well-known, namely that marriages must be celebrated according to the decrees, and that the own parish priest is only considered to be the one to whom the place of domicile or quasi-domicile belongs. However, they claim that neither of them had a domicile in the city of Neo-eboracensi, and that it is therefore not proper to invoke the first decree because he compared it to his own. Furthermore, they argue that Tametsi does not need to be observed in places where it has not been promulgated, such as the American city; and secondly, that even if it should be observed, Albert did not lack a quasi-domicile. This is because, according to the law, if someone residing in a place where the decree is observed celebrates a marriage in another place where it is not observed, obstacles...

[*Latin ed. p. 586*]

586. Marriages prepared at home are invalid, and a marriage begun fraudulently is tainted, unless previously a quasi-domicile has been sought in the place of celebration. This is stated in the law, according to Pontifical Letters of Urban VIII, dated August 14, 1627. The following doubts were proposed in the Holy Congregation: "Firstly: Can inhabitants, both men and women, who are passing through a place where the Council of Trent was promulgated concerning the matter of marriage, validly contract marriage in that place without a parish priest and witnesses? Secondly: What if these same inhabitants, both men and women, transfer themselves solely with the intention of contracting marriage without a parish priest and witnesses, without changing their residence? Thirdly: What if these same inhabitants, both men and women, transfer their residence with the sole intention of contracting marriage without a parish priest and witnesses?" The response of the Holy Order was: "Regarding the first and second, there is no legitimate marriage between those who transfer themselves in this way, and those who are passing through, if there is fraud; but regarding the third doubt of this kind, if a true domicile is genuinely transferred, the marriage is valid." Urban VIII subsequently explained this definition in writing, and Benedict XIV confirmed it by decree on March 19, 1758, establishing that it should be considered a canon to be followed in all similar controversies. Having stated these things, he discusses the fraud that corrupts marriage, whether in law or in fact. According to law, as stated by Benedict XIV in the aforementioned constitution, fraud is to

Translated by churchlatin.ai, a product of Boyne Archives

be considered when it is committed against the parish, and it is always committed whenever a legitimate domicile or quasi-domicile is lacking in another place, as that Pontiff states in *Institutiones eccl.*, 33, and as the Holy Order confirmed in the decree *Cameracen, de nullitate matrimonii*, dated July 2, 1866. In fact, he first observes that the intention of deceiving is clearly evident, because the spouses confess that they knew each other more easily in the city of Neo-eboracensi, and they appeared before the Rector of the Church of Saint Paul, in order that the spouses might not do anything against the validity of the marriage: because, in truth, they could have contracted it there; but here, the oath was...

[*Latin ed. p. 587*]

Marriage could never have been celebrated in Gallia, because some witnesses judged that he did not have that intention; and for the same reason, a marriage with another young woman from Gallia had been contracted in Helvetia. Furthermore, it is sufficient for fraud against a parish priest that the comparison of new residences is lacking, as the law demonstrates that not only physical presence, but also the intention of residing, is required, as testified by Engel, *coll. iur. canon., de cland., desp.*, n. 12; and S. C. apud Benedictum XIV, *instit.*, 33. One distinction between domicile and quasi-domicile is, therefore, based on intention, in which the former involves a will to reside permanently, while the latter involves residing for at least a significant portion of the year (Antoine, *Theol. moral., de matrim.*, § 432, note i; S. Alph. de Ligorio, *theol. moral.*, lib. 6, tract. 6, cap. 3, num. loci). However, mere physical presence, detached from intention, as Ursaya states, *discept. eccles.*, Io. 2, par. i, disc. io, n. 41, is never sufficient. Nor does this rule contradict what is stated in law, that thirty days of residence are sufficient for quasi-domicile. The term is established only where there is no evidence of intention; if contrary intention appears, the presumption yields to truth (Menoch., *de arbitr.*, eas. 86, n. 3). Therefore, whatever the term may be, intention must always be investigated, as the Rota decided in Neapolitana - *Matrimonii*, June 22, 1705, 4, before Priolo and S. H. O., and in Gratianopolitana - *Matrimonii*, April 23, 1841. However, in this case, it is argued that both the thirty-day term and the intention were lacking. Witnesses were presented, and letters were offered as proof, that during a long journey of approximately five months through the American provinces, Albert had spent only fifteen days in a lodging in Neo-eboracensi, and then, during various journeys, sometimes for two or three days, sometimes for a shorter period, totaling less than thirty days. It is argued that these frequent journeys demonstrate that he did not intend to reside in any particular place, but rather that he was always staying in different lodgings within

Translated by churchlatin.ai, a product of Boyne Archives

the same city, as evidenced by the testimony of witnesses.

[*Latin ed. p. 588*]

588. He completes the marriages, which the Archdiocesan Court has declared to be valid. Therefore, although these delays occurred, a full year is lacking. But he maintains that it is not possible to be joined [in marriage] unless the delay, as required by law, is entirely constant and permanent, as stated by Ursaya, *Discipline Ecclesiastica*, vol. 2, part 1, discourse 10, no. 2; and the time of the law is that the parties, by constant intercourse, must be known to reside in the vicinity: *Benedict XIV*, in the cited document, Constitution *Paucis ab hinc hebdomadis*. But a permanent residence certainly cannot be said to exist when it is merely occasional, occurring sometimes for only three days, with long absences in between. Furthermore, it also demonstrates a lack of true intention. And indeed, if someone does not intend to remain permanently, but rather resides there only for a temporary reason, whether for travel, business, or a journey, or for a short stay, then such residence does not constitute a domicile for even a year, nor does it confer jurisdiction upon the parish. The defender argues this first through the text in chapter 1 from common law, *Ulpian, De sepulturis*, 1, 1, § g, and then concerning the ecclesiastical jurisdiction in matters of marriage, from 6 in the parish, *Benedict XIV*, cited, *Institutiones*, 33; *Pignatelli, Consultationes Canonicae*, vol. 3, consultation 76, no. 1; *De Luca, De Matrimonio*, discourse 1, no. 11; and *Fagnanus, In cap. Significavit de parochia*, no. 27. The fact that Albert never intended to reside permanently in the city of New York, but rather visited it for the purpose of travel and lodging, is demonstrated both by his intention and by the facts themselves. His intention is proven by his varied journeys, and by the companions he had on those journeys. Furthermore, the letters of a woman, which spoke of these various journeys and of the plans that were completely different from those of Albert, show that the woman was always uncertain whether Albert would return, or where he would reside. She also knew, or rather, she understood that the lodging in New York was sought primarily for the convenience of travel. And the facts confirm his intention. In truth, during those five months, Albert traveled and stayed in various regions of America: the witnesses state that he would have returned to France much sooner, if his parents had not intervened.

[*Latin ed. p. 589*]

Marriage 589 Concerning Albert. With regard to the matter at hand, the defense argues that the facts are few, since it is clear that the woman arrived in the city of New York only three days before the marriage. She also noted something about the priest, who had said that married couples benefit from having a domicile in the city. And first, she pointed out that the priest acted hastily without any investigation, although he knew that the couple

Translated by churchlatin.ai, a product of Boyne Archives

could not have entered into marriage in France, and this would not be possible unless they had first established a domicile in the city of New York; then, she stated that the same priest, when questioned, admitted that he had only demonstrated the couple's faith, and that he had not inquired about the domicile, of which the couple was guilty of fraud, and that the term of thirty days was disputed. Therefore, she concludes, the intention was lacking, and thus the supposed domicile vanishes. Hence, the marriage suffers from a defect in form. And this is considered incurable, so that no one, even for the sake of avoiding damage or necessity (which, however, she says is entirely absent), can remedy it, as testified by Ursaya, *disp., eccl., t. 2, par. i*, Spina, *De testam.*, *Gloss. 13, n. 43*, *disp., io, n. 130*, and *PRO VALIDITATE MATRIMONII*. But those who are involved in the marriage proceedings first present testimonies to prove that Albert was not infirm in mind or body when he entered into the marriage; and therefore, she says, he cannot invoke the exception that he was not entirely of sound mind while in the church. Then, proceeding to the question of domicile, she investigates this matter from Albert's perspective, and although one month would be sufficient for establishing a domicile, she says that in Albert's case, he had resided in the city of New York for five months. In this matter, she established the legal basis. It must be considered, she says, between the quasi-domicile which is necessary to validly contract marriage where the Council of Trent is in force, and the quasi-domicile which each person acquires in a place where the law of Trent has not been promulgated. The first is sought according to the constitution of Benedict XIV to the Archbishop Goan and the resolutions of the Holy Order; the second is derived from law.

[*Latin ed. p. 590*]

590. Concerning marriages celebrated in common. However, he continues, civil law requires nothing other than a mere and material dwelling. Whoever dwells there, whether in mind or by intention, whether as a guest, or as a traveler, or as a vagrant, always possesses a domicile according to civil law. It does not matter that the laws of Trent were not promulgated in that American region; on the contrary, this very fact indicates that the marriage was entered into according to the laws of the place, which do not require a proper pastor, as Sánchez observes, book 1, section 18, there: "Question fourth: If inhabitants of places where the Decrees of Trent are binding, come together in a place where they are not binding, can they, according to the laws of that place, contract marriage without a pastor and witnesses? It is more probable that they are not bound to contract before a pastor and witnesses. This is proven first by the statements in numbers 18, where we defend, as more true, that travelers absent from their domicile are not bound by the laws of that place, if contrary laws prevail in the place where they are found. Secondly, because, even if we were to consider

Translated by churchlatin.ai, a product of Boyne Archives

ourselves bound by the laws of the domicile, yet (as we have said in number 10) with regard to the formalities to be observed in contracts, only the laws of the place where the contract is celebrated are considered." Indeed, the defender continues, it is the same thing that is cited to argue that, even if the author of the marriage entered into it fraudulently, but the defender does not prove this, and on the contrary, the praised author admits that such a marriage cannot be valid in the Church. But he insists that there was no fraud in this case. Albert went to America not to celebrate a marriage, but to travel and to spend a long time in a remote region. He says that there was no fraud without intention and design to deceive. However, when asked, "Did you intend for the Church of St. Vincent to have its own pastor?" Albert replied: "I never thought of that." When asked again, "Did you and Armanda believe that the presence of your own pastor was necessary for the validity of the marriage?" he replied that he was unaware of all of this. Nor did Armanda testify otherwise under oath. Moreover, when Albert was asked, "Did you know that the Council of Trent had not been promulgated in the state of New York?"

[*Latin ed. p. 591*]

Concerning marriage, does this relate to those matters pertaining to marriage? He replied that he had no knowledge of these things. After these statements, he declared that it was of no consequence that Armanda had given an answer regarding the aforementioned article, stating that he knew that it was easier to enter into marriage in the city of New York than in Gallus. He said that the woman was completely ignorant of what the law of Trent stipulated, and could not have foreseen the deceit involved in this law. Indeed, when he stated that it was easier to contract marriage in the city of New York than in Gallus, he thereby indicated that he intended to deceive her parents, not the priest. However, the truth was that the pastor of St. Vincent considered himself to be her pastor. Furthermore, he said that she might indeed have intended to commit fraud, as the woman had sworn to her parents that she would go to the American region in order to establish a permanent residence there. And indeed, after the marriage was celebrated on August 15, 1868, the spouses separated at the end of December. To this, the priest openly responded, saying: "Armanda declared that she wished to establish a residence in the city of New York."

But what if the deceit could be proven to have originated from the woman? However, the Defender argued that it would be sufficient if the man had not been deceitful, in order for the marriage to be valid. For, in order to invalidate a marriage, it is necessary to prove that one of the parties intended to deceive the priest and the witnesses, since the contract is an individual act. Wherefore, as Reiffenst., in *ius canon.*, book 4, title j, number 121, and Baumbgartner, in *Decret*, vol. 2, book 4, title j, conclusion 5, state, deceit cannot invalidate a marriage in the

Translated by churchlatin.ai, a product of Boyne Archives

case of the Council of Trent. However, he declared that it was clearly the case that there was no deceit on the part of Albert, who did not go to America in order to contract marriage, but rather for the opposite reason. Therefore, he concluded, it could not be the case that the decree of Urban VII could be applied in this instance, as Benedict XIV mentions in the Apostolic Letters *Paucis ab hinc hebdomadis*. This decree concerns those who, with only their intention, enter into marriage without a priest and witnesses. Therefore, it is not surprising that the Vicar of the Curia of New York, in his examination, expressed a vote in favor of the validity of the marriage.

[*Latin ed. p. 592*]

Marriage 592. It does not impede that the Rector of the Church of St. Vincent de Paul administered an oath to the contracting parties, so that they might not do anything contrary to the validity of the marriage. Indeed, the Defender adds, this very oath wonderfully confirms the validity of the marriage. For if the oath itself is licit, it must be religiously observed. But it is licit to swear to something illicit, in order that civil magistrates may not dissolve the sacred bond of marriage. And he who swears must perform what he has sworn; otherwise, as the Doctor observes, truth is lacking in the oath (Thom. in qu. 8ç, art. 7). Doubt: Does it follow that there is a nullity of the marriage in this case? RESOLUTION. The Holy Congregation of the Council, on January 25, 1837, judged it fitting to respond: "It is known that there is a nullity of the marriage." From which, the following are gathered: I. If someone, residing in a place where the decree of the Council of Trent is observed, transfers himself to another place where the decree of Trent has not been published, or has ceased to be binding, with the intention of contracting marriage there, the marriage begun in fraud is infected with nullity, unless a domicile or quasi-domicile has been acquired in the place of celebration beforehand. II. For the purpose of contracting marriage, a domicile is not required, but a quasi-habitation suffices, if the person resides there for the greater part of the year. III. Therefore, even if someone has resided elsewhere for one month, if, nevertheless, other arguments are available from which it can be shown that the intention was lacking to remain there for the greater part of the year, then no quasi-domicile has been acquired. The Most Illustrious and Roman Cardinal Tarquini of the Holy Office, whom we recently mourn, excellently explained this doctrine before the Holy Congregation in the case of the Roman Marriage, on January 11, 1868. After he...

[*Latin ed. p. 593*]

Appendix 593 APPENDIX. It must be considered that, through this Declaration of the Holy Congregation, nothing has been taken away from the opinion of both theologians and canonists, who state that those who

Translated by churchlatin.ai, a product of Boyne Archives

present themselves in a place where the Decree of Trent was either never promulgated, or has ceased to be binding, cannot validly contract marriage without observing the form prescribed by the Council, even if they do not intend to establish a domicile or quasi-domicile there, provided that they have not presented themselves there in violation of the law, that is, with the intention of secretly contracting marriage there. The doctrine of the scholars is thus summarized in a few words by the most illustrious Father Anthony Ballerini, Professor of Moral Theology at the Roman College of St. Thomas, in Notes on Gury, vol. 2, § 839: "Furthermore, the more common opinion is that of Sánchez (de Matr. lib. 3, disp. 18, n. 28), Pontius (de Matr. lib. 6, c. 9, n. 2), Reiffenstuel (Ius. Can. lib. 4, tit. 3, n. 123), Engel (ibid. tit. n. 20, cited by Gonzales in Cap. 3 de cland. desp. n. 8; Reiffenstuel, ibid. tit. n. 60, and tit. de foro compet, n. 22; Schmalzgrueber, tit. de cland. desp. n. 150; Pirhing, ibid. n. 19; Pichlir, ibid. n. 12; Viestner, ibid. n. 45; Schmier, de spons. cap. 5, n. 97; Barbosa, de offic, et potest. Episc, part 2, allegat. 32, n. 62, who state: 'The unanimous doctrine of all these is that a quasi-domicile is sufficient for validly contracting marriage, not for one month, but through such a residence as is accompanied by the intention of continuing it for the greater part of the year.' It is true that in the Constitution - Paucis - Benedict XIV admitted the acquisition of a quasi-domicile in one month. However, he did not inquire by law for how long a quasi-domicile was presumed to be established, but rather had a true and proper intention, which limited the presumption to a narrower time frame of one month, while others considered a longer period to be necessary. Berardius proposes four months in Comm. ad ius eccl. disc. 5 de forma et solemn. coniug. 'there.' Therefore, the pragmatic jurists teach that a period of four months is sufficient for someone to be considered, for this purpose, to have acquired a domicile in the parish. And the Rota, in decision 1298 before Lancetta, n. 8 'there,' with... the permanence of one or two months having been admitted by the Holy Congregation in several resolutions. - However, whether the period of residence is shorter or longer, it is not defined in such a way that the intention should not be primarily considered, but rather, in the absence of any knowledge of the intention, it constitutes a mere presumption. Thus, the Constitution - Paucis is succinctly summarized by Giraldi, part I, App. I ad Lib. 4, decis. n. 14, who says: 'A quasi-domicile is acquired when someone has resided in a place for at least one month where marriages are celebrated, according to the Constitution - Paucis, provided that they have gone there with the intention of establishing a domicile.' This intention, however, was clearly in the mind of the aforementioned Emmerus, as demonstrated by the aforementioned Acts, vol. VII, fasc. LXXXI, n. 38.

[*Latin ed. p. 594*]

594 Appendix « Council 3) etc., holds that these [actions] are validly

Translated by churchlatin.ai, a product of Boyne Archives

binding, even if the contract does not include « a parish priest or witnesses. The reason is that foreigners are « not bound by the laws of the country when they travel outside of it, and especially « with regard to contracts (such as marriage), in which they are subject to the laws and « the jurisdiction of the places in which « they are present, as is stated at the end of Chapter 3, On Competent Jurisdiction, and in the law Si fundus ff. « on Evictions. It does not matter that the Council of Trent prohibited « certain people from contracting marriage without the prescribed formalities: for the « incapacity, as is commonly said, follows the person like a shadow follows « the body. This is only the case when the person is absolutely and simply « incapacitated, and in an individual case by a judicial sentence; otherwise, if the « incapacity is general by law; then it follows the nature of the law, and consequently, where the law does not obligate, neither does the « incapacity, nor does the act follow annulment. Thus, in addition to the aforementioned Barbosa {On the Office of Bishops, p. 2, Supplement 32, no. 153} and Schmalzgrueber « {Law 4, Title 3, no. 110} ». Indeed, the learned Ballerini has very moderately called this doctrine « common; while some, like the Most Reverend Cardinal Tarquini in the cited passage, consider it absolutely common, and I will describe his main arguments. « It is sometimes heard that Pope Benedict XIV, in his Constitution Paucis, « reduced the period of quasi-domicile to one month, so that, in a certain sense, he established that a quasi-domicile could be perfectly acquired for the purpose of validly contracting marriage with just one month of residence. I believe that this is entirely foreign to the truth, to the mind of Pope Benedict XIV, and to common opinion. For among many things that could be said, I will only say this: first, it is certain that the doctrine, constantly affirmed and confirmed by the practice of the sacred tribunals, even after the aforementioned Constitution of Pope Benedict XIV, is that marriages contracted before a parish priest of the place where one usually resides are valid... and this doctrine could not have been, nor could it be, held any longer if Pope Benedict XIV had reduced the period of quasi-domicile to one month. Secondly, it is known that the Constitution - Paucis - was issued by Pope Benedict XIV « to prevent evils arising from marriages (which, namely, are contracted outside the country, and especially in places where the law of Trent on clandestine marriages has not been promulgated), as is stated in the Constitution itself. Therefore, it would have been absurd, and unworthy of such a Pope, to reduce the period of quasi-domicile to one month, since this would have made those marriages easier in which it was necessary to place some obstacle and remedy; and thus, it would not only not have prevented those very serious evils that were deplored in Goa, but would have opened a wider path to them. Thirdly, it is clear from the simple reading of the Constitution that Pope Benedict XIV did not intend to establish a new law in it, but to recall what was already in force ». Therefore, the month is added to the presumption, not as a term.

Translated by churchlatin.ai, a product of Boyne Archives

If there is no certainty about the intention, the presumption is made. But if there is no intention, the presumption yields to the truth, and if there is no intention, there is no domicile. This is demonstrated by that author who has never been sufficiently praised. Then he proceeds as follows: « Since residence already

[*Latin ed. p. 595*]

Appendix 595, and Reiffenstuel (loc. cit.); and Pichler (Lib. 4, Tit. 3, n. 14), and Mark Struggi (De Matrimonio L. 3, n. 180), and Ferraris (V. Impedim. art. 2, n. 110); indeed, even the most common opinion, as expressed by George Gobat (Tract. IX, n. 484), affirms this. Furthermore, Ferraris (loc. cit.), Pichler (loc. cit.), and La Croix (lib. 6, Part. 3, n. 712), cite Declarations of the Holy Congregation in support of this doctrine. Otherwise, one will find very few who have taught the contrary; and, quite undeservedly, Albert defended the Holy Doctor Alphonsus against them. It is more accurate to say that the Holy Doctor dismissed this question. And indeed, one finds (Lib. 6, n. 1081) that, with regard to this point of doctrine, La Croix and the theologians of Salamanca opposed Sanchez, while the theologians of Salamanca (Tract. 9, Cap. 8, n. 21), and La Croix (Lib. 6, Part. 3, n. 712), certainly diverge from Sanchez, if we are speaking of those who, with fraud, that is, with the intention of contracting marriage, have gone to those places; but if that intention, and therefore that fraud, is absent, then both the theologians of Salamanca (ibid. n. 19), and La Croix (loc. cit.) completely agree with Sanchez that the marriage is undoubtedly valid. Therefore, the Holy Alphonsus spoke of those who proceed with the intention of fraud, and not of others. And this is clearly demonstrated by the fact that a very important indication of whether such an intention is truly and sincerely held is that a person has acquired a domicile by residing in a place for a period of one month. What follows from this? Namely, this. Since presumption must yield to truth, both by positive and natural law, it follows that if it should happen that, with certain and clear proofs, it becomes evident that neither the one who claims to have established a domicile has had the intention of remaining there for the greater part of the year, nor the other who claims a domicile has truly had the intention of remaining there permanently, but rather that the contrary is the case, then, in such a case, one cannot doubt that neither of them sought a domicile for themselves; and since the validity of marriage depends on the quasi-domicile, it cannot be said that the marriage was validly contracted. Therefore, what Benedict XIV established is entirely correct. When the Archbishop of Goanus strongly insisted on a certain point in defining such cases, namely that proofs of the intention to remain for the greater part of the year are very often doubtful, that Supreme Pontiff, rather, recalled what had long been established by law, that in these doubtful cases, presumptions must be used, and that the presumption is sufficiently firm for judgment, if the one who is contracting

Translated by churchlatin.ai, a product of Boyne Archives

marriage has resided in the place where the marriage itself is celebrated for a period of at least one month before the marriage is contracted. Therefore, the month mentioned by Benedict XIV is nothing other than a certain presumptive proof in doubtful matters regarding the true and sincere intention of remaining for the greater part of the year, and therefore does not abolish the necessity of that intention, but rather confirms it; so that if we are not dealing with a doubtful matter, but with a clear and manifest matter in which such an intention is lacking, it is certainly the case that, even with the residence of one month, it must be held that no domicile has been sought in any way, and therefore that the marriage has not been valid in any way.

[*Latin ed. p. 596*]

596. The Appendix confirms that the Saintly Doctor only opposed that doctrine which is contrary to the Declaration confirmed by Urban VIII. However, this Declaration only applies to those who act with deceit or fraud. Therefore, Albert, the Defender, maintains that such deceit can be found even in the mere fact itself, even if there is no intention whatsoever on the part of those involved to secretly celebrate a marriage in that place. But this interpretation of the Decree, entirely unheard of until now, has been rejected by the unanimous consensus of both theologians and canonists, and it will be impossible to find even one who suspects that such a meaning should be attributed to the concept of fraud. Indeed, Benedict XIV, in this matter, calls the Defender to account, and has presented the clearest expression of the true opinion of the Pope against this new theory. After stating that, according to common doctrine (De Synod. Lib. XIII, Cap. 4, n. IX), those who reside outside the territory of the legislator are not bound by its laws, he immediately adds (ibid. n. X), that this is an exception if someone leaves a place with the sole intention of evading the obligation of the law. By what examples does the Defender illustrate the nature of this deceit? Firstly, he cites those who, with the sole intention of secretly contracting marriage, leave the place where the Tridentinum has been promulgated, and go to a place where it has not been promulgated; such a marriage is declared invalid by the declaration of the Holy Congregation, confirmed by Urban VIII; then, he cites the example of those who, having reserved sins in their own dioceses, go to a foreign diocese, in deceit of the reservation, to obtain absolution from the Regulars. And he concludes: "From this, it is clear that no one can be held responsible for deceit or fraud, and that this deceit is truly committed by him who, with the SOLE INTENTION OF EVADING THE LAW, leaves the place where it is in force." Therefore, according to Benedict XIV, the Defender wrongly requires deceit in the mere fact, if there is no intention of evading the law; this is confirmed by the unanimous opinion of all, who hold that a valid absolution is given to those who, when migrating, do not

Translated by churchlatin.ai, a product of Boyne Archives

have the intention of evading the reservation. What the Defender adds, according to Benedict XIV (Instr. 33), that the parish priest commits fraud, is certainly true, when the marriage is celebrated in a diocese or parish other than his own, where the Tridentinum Decree is in force; in this case, the marriage is invalid, whether the marriage is contracted without the assistance of the parish priest, or with the assistance of a parish priest who is not his own. For, according to the Tridentine law, only the parish priest has the right to assist as a legitimate witness, so that the marriage may be valid, and this last hypothesis is discussed by Benedict XIV (loc. cit.). But when the marriage is celebrated in a place where the Tridentine Decree is not in force, and therefore no parish priest is required by law to assist as a witness, it is utterly absurd to think that any injustice or fraud is present in the parish priest, whose...

[*Latin ed. p. 597*]

Appendix 597: An essential office would not exist, even if the parish priest proper to the contracting parties happened to be present in the same place. From all of these things, it is certainly permissible to conclude that the Holy See declared the marriage of Albert with Armanda invalid for entirely different reasons.

CONSTRUCTION OF A BAPTISMAL FONT. January 25, 1873. Summary of the case. Oppido Syllani, which is part of a certain Vicariate Forane in the Archdiocese of S., is surrounded by several territories that have their own parishes and their own pastor, but are lacking a baptismal font.

Furthermore, among these territories to be considered is the territory of Forfi, whose inhabitants have, from ancient times, been accustomed to bringing infants to be baptized in any church of Syllani. However, in the year 1870, when the Archiepiscopal See was vacant, representatives, citing the difficulty of access to that church during the winter due to snow, ice, and the roughness of the roads, making it sometimes almost impossible without endangering the lives of the infants, presented petitions to the Vicarius Capitulari, requesting that they be granted the faculty to erect a baptismal font in the parish church, with the understanding that they would provide the necessary resources for its construction.

The Vicarius Capitulari accepted these petitions, with the added clause "provided that the rights of another parish are not infringed." However, after the baptismal font was erected, the parish priest of the church of Syllani issued protests, declaring that such an erection was null and void, and that it was detrimental to the rights of his parish. He presented a supplication to the Holy Congregation, in order to protect his rights.

This supplication was filed for information and sent to the Vicarius, and it was ordered that, after hearing the parties involved, he should report on

Translated by churchlatin.ai, a product of Boyne Archives

the rightful claim of the petitioner; which was done by the Vicarius himself.

[*Latin ed. p. 598*]

The records of the erection [of the parish] number 598. The decree and the cause for the baptismal font, presented to the Holy See, are to be placed in the file under the designated code; the form for expressing doubts is at the bottom. A concise summary. The defense of the parish priest states that the parish of Syllanensis and the church of Forti are not so far apart that the journey is arduous, nor is the road impassable in winter, nor can Forti be considered a distant town from the church of Syllanensis, since it is only three Roman miles away. Furthermore, he asserts that, according to the judgment and testimony of the parish elders, and also of the congregation of fathers of families convened for this purpose, the parish of Syllanensis rightfully possesses the right of patronage over all others within the entire vicariate. Indeed, all and nearly all the witnesses, of whom seventy were constituted, affirm with one voice that they have always considered themselves obligated, as parishioners, to attend the Holy Mass on Sundays, to receive the word of God, and to be nourished by the sacraments, and that during the Lenten season, they have the custom of seeking the "mosyn" [a Lenten dish] on the fourth Sunday of Lent throughout the entire vicariate, in order to pray for the souls in Purgatory. Now, since the parish of Syllanensis rightfully possesses the right of patronage over all others, it necessarily follows that it was necessary for a new baptismal font to be erected in the church of Forti. Finally, he appeals to the memorable, constant, and peaceful custom, stating that such a custom has only the force of a law, as if it were a written law. Text in *Leges sine scripto*, *Institutiones*, title on natural and civil law. — Peretius in *Commentaria* on the *Institutiones*, on the aforementioned law. — Voet in *Commentaria*, on *Pandects*, title 1, on laws, Book 1, number 10. — Pota, decision before Lancetta, 1552, number 6. Moreover, he adds that this [custom] presupposes and establishes a better claim to the world, and even derogates from the rights of the parish priests. Chapter on certain matters, 26, §, furthermore, on the aforementioned.

[*Latin ed. p. 599*]

Erection of a baptismal font: 599. – From Lucca, *De beneficiis*, vol. 12, disputation 32, paragraphs 3 and 4. – Schatz, *De iure Ecclesiastico*, vol. 1, part 1, title 4, paragraph 31. – The Rota in Gerundia, in the sessions of Feria II and December 16, 16çç, paragraphs 5 and 10, before Lancetta. – Recently, decision 674, paragraph 16, part 18. – From this, it follows that the Supreme Pontiff does not usually grant to any church a baptismal font to the detriment of another, without due cause, as can be seen in Massilia. The church of Saint Stephen, January 7, 1740 – concerning the baptismal font in Spoleto, January 28, 1832, in which, after a question arose among the Fathers of the

Translated by churchlatin.ai, a product of Boyne Archives

Oratory who were in charge of the parish, and the metropolitan church, which had possessed the baptismal font from time immemorial, it was erected by a decree of Leo XII, only on the basis of a promise made to them; however, an annual payment was required from other churches, besides their own, and the parishioners were forbidden to administer baptism, so that, as far as possible, they might bring their children to be baptized in the metropolitan church. From all of this, it is concluded that the decree promulgated by the Vicario Capitulare has no validity, especially since it is protected by the clause, "saving the rights, etc."

DEFENSE OF THE DECREE OR OF THE PARISH OF FORFI. First of all, the parish priest of Forfi denies the dependence of his own church on the parish of Syllanus, since it is usually conferred by a prior concord, and in the bull of institution, the parish priest of Saint Peter and Christopher is named, and not a vicar or a parochial chaplain; indeed, in the 12th century, the municipality of Syllanus itself affirmed this, when, among other things, it sought an exemption from the reconstruction of the bell tower, stating that the churches of the surrounding towns were independent, and that although the baptismal font exists only in the church of Syllanus, there is no obligation for the inhabitants of those towns to bring their children there to receive the sacrament of baptism. This, in fact, is supported by the fact that there are testimonies of parish priests who have baptized children in their own parishes, while the parish priests of Syllanus have not claimed them. Therefore, since the own church is independent, it is certain that, if...

[*Latin ed. p. 600*]

Concerning the erection of a baptismal font, if necessity arises, the administration of the sacrament of Baptism to the infants of the parish belongs to the Parish Priest, as is traditionally taught by the Supreme Pontiff Clement I, in his letter 3, to the Council of Florence, in the Decree of Union. Secondly, the Church of Syllana denies this, and confirms it with the testimonies of certain Parish Priests. Finally, the parents demonstrate, through depositions, the difficulties they have encountered, with one parent lamenting the loss of a child, the only child, who died from a long journey and severe cold contracted while traveling to receive baptism from the Parish Priest of Syllana; the other parent complains that his child contracted an eye disease for the same reasons, and they attach a document with these depositions.

THINGS ADDED BY OFFICE:

It has been observed that, in order to clarify this matter, although Baptism can certainly be validly administered by anyone, it is not, with regard to its solemnity, to be administered by just anyone, but only by those who are appointed by office, among whom the Bishops hold the first place. In-

Translated by churchlatin.ai, a product of Boyne Archives

deed, it is taught that in the early times of the Church, only Bishops were accustomed to confer the Sacrament of Baptism, and that only the cathedral churches, in which the Bishop resided, possessed a baptistery (Benedict XIV, *Inst. Eccl.*, i, no. 4; Martin, *de antiq. Eccl. rit.*, lib. i, cap. i, art. 2, cap. 15; S. H. C., in *Reatina Iurium Parochialium* 14 January 1860, §; Ariminen, *Fontis Baptismalis* i February 1868, §; After, because all newborns were brought to the city where the Bishop resided for the purpose of receiving baptism (Catalan., in *Comm. ad Pontif. Rom.*, t. 2, lib. J, *de benedictione et impositione primi lapidis pro Ecclesia aedificanda*, p. i, n. 27). However, as the number of the faithful increased, and the dioceses were divided into archdeaconries, so named from the number of parishes they comprised, a "Christian archdeacon" was appointed to each of these, to whom the duty of administering baptism belonged (Thomassin, *de vel. et nov. Eccl. discipl.*, part. i, lib. 2, cap. 6, §; Benedict XIV, *loc. cit.*, n. J).

[*Latin ed. p. 601*]

The custom of granting baptismal fonts to parishes, especially in rural areas, gained prominence after the ninth century. Pope Benedict XIV, in the cited work, number 3, confirms this. Therefore, although the right to baptize may be considered among the rights of a parish, as noted by Lotter in "De Re Beneficiorum," book 1, question 28, number 34, and indicated by the Tuscan author in "De Visitatione," book 1, chapter 7, number 16; and by the Rota in decision 404, number 37, volume 1; it does not necessarily follow that the possession of a baptismal font implies a parochial status, as argued by Gonzalez in "Ad Reg. 8," Cane, gloss 6, number 48; Barb in "De Jure Eccl.," book 2, chapter 1, number 26; Petra in "Ad Constit. 2 Gregor. XI," number 17; and the Sacred Congregation in the "Rec. Ariminen," in the cited passage. Consequently, the Sacred Canons distinguish between parochial churches and those with baptismal fonts (Council of Trent, session 21, chapter 4; Sacred Roman Congregation, in the Decree "De Urbis et Orbis," December 10, 1705, regarding the sixth doubt; Sacred Holy Office, in "Ariminen," in the cited passage). Hence, it follows that the right to baptize subjects of another parish can be acquired through privilege and custom (Petra, cited, number 33; Gonzalez, cited, number 2; Federici, "De Senis Cons.," 80, number 3, and 133, number 2; Frances, "De Eccl. Cath.," chapter 21, number 84; Sacred Roman Congregation, as cited by Barb, "De Paroch.," chapter 18, number 4). The aforementioned opinion of the Doctors was also followed by the Holy See, which, in the judgment of May 13, 1700, concerning the Basilica Vaticana in Romana, ruled that the parish priest could also baptize the inhabitants of other parishes, since, in response to the question "Whether the Curate of St. Peter in Vaticana is permitted to baptize those residing in all the parishes of the city," the answer was "affirmative." Furthermore, the retention of the baptismal font indicates a preeminence over other churches in the same locality, as noted

Translated by churchlatin.ai, a product of Boyne Archives

by Petra, cited, section 17; Frances, cited, chapter 13, numbers 167 and following; Pavin, "De Visitatione," part 2, question 3, number 33; and the Rota in decision 404, number 38, section c, volume 1. And the Sacred Holy Congregation, in "Ariminen," July 28, 1731, decreed that the existence of a baptismal font constitutes a reason for establishing a relationship between two churches, namely, that in one of them, there is a baptismal font, and that infants are received there for the purpose of baptism.

[*Latin ed. p. 602*]

602 It was customary for the parish priest to bring to the baptismal font, which was erected, the oil for anointing, while he usually requested the other sacred oil from the Archpriest, so that he might anoint the sick. However, it is clear from the practice of the Holy Office that it has never been the custom to grant the erection of a baptismal font to parishes where there are already baptismal fonts in the churches, so that a distinction may be made between the churches and other chapels. Reatina, cited, §; Cassanen., law of the parish, February 7, 1772; Camerinen., erection of a baptismal font and the right to baptize, February 10, 1748. And if, at times, it has been necessary to grant this, it is evident that it has been done as an indulgence, either with the condition that the consent of those concerned be obtained, as in Alassilien, January 7, 1640, or with sufficient provision made that the church in which the font had been established from ancient times would not be deprived of its due services, as in Urbevetana, August 3 and December 14, 1748. Callein. Erection of a baptismal font, March 18, 1868. Since the church of Syllariensis appears to be a mother church for the churches of the entire vicariate, and since it seems to have prescribed the right to baptize the children of these parishes, and since the inconveniences that existed in the past are found to be present today, it must be maintained in the future what has obtained up to now, so that no absurdity may arise in which someone, having acquired a right, is forced to relinquish it. On the other hand, it is noted that although the Sacred Congregation does not prescribe that a baptismal font be erected in all parish churches, ancient church laws greatly desire that each parish priest, with his own hands, should introduce his flock into the church with the sacred ablution, so that the flock, 'in ut singuli Christi pastores gregem certo cognoscant cooptentur et in quaenam Ecclesiae sinum excipiantur,' as the Rota observed in Romana, on the law of baptism, January 12, 1731, before Samminiat, cited by Ferraris, v. Baptism; so that the parish priests may more easily ascertain who have been born of legitimate marriages, and may therefore be recorded in the parish books; so that greater diligence may be exercised by them to prevent the delay of the presentation of children to the church, in which it is expedient to receive them for the purpose of spiritual regeneration, as they may obtain

Translated by churchlatin.ai, a product of Boyne Archives

the benefits of the font. Indeed, if an indulgence is granted.

[*Latin ed. p. 603*]

The erection of a baptismal font can also be permitted in those churches which are not parish churches, provided they possess a baptismal font, although this is rarely done. Regarding this matter, the Council of Milan, Session III, declares: "A baptismal font should not be placed in any church other than a parish church, or in the church of a rector, for the reason that the parish church is granted by the bishop; therefore, it should be considered more advantageous for the people if the parish church is located further away, so that the needs of the people may be better served." This is also consistent with the opinion of Cardinal Catalano, in his commentary on the Roman Ritual concerning Baptism, § 10, number 8. Barbos, in his work on Parishes, chapter 18, number 7, and especially the Holy Congregation of the Council, which has often confirmed this practice in its resolutions, as in Urbino, on May 5, 1624, where it was decided that a baptismal font should be present in parish churches. In Leodium, on June 7, 1602, due to the distance of the place from the mother church, and the danger to infants, the erection of a baptismal font was approved. This was also decreed in Fulginate, on June 22, 1720, in response to the question: "Whether the erection of a new baptismal font in the church of Saint Mary in Castri senioris is to be maintained," the answer was: "Affirmatively, with the liberty for the parishioners of Saint Mary in Castri senioris to continue to bring their children to be baptized in other parishes as usual." However, in the case of Fabriano, regarding the baptismal font and the right to baptize, the question was asked: "Whether the erection of a baptismal font in the church of Saint Blaise (a filial church of the Cathedral) is to be permitted," and the answer was "No" on June 21, 1632. But the matter was reconsidered on November 21 of the same year, and the following was decided: "The Most Reverend Fathers are to depart from the previous decision." And again, when the Chapter insisted, the question was raised on May 1, 1733, under the doubt: "Whether, regarding the first doubt, one should adhere to the decision in the first or second place." The response was: "Adhere to the decision in the second place, and furthermore." In the case of Rimini, concerning the erection of a baptismal font, on February 1, 1868, it was stated that in the church of Saint Mary de Cento, a filial church of Saint Paul, a font had been erected by decree of the Vicariate Capitular, with the consent of the parish priest of the mother church, and that the parish priest of the filial church of Saint Blaise, belonging to Saint Paul, in which infants were accustomed to be baptized, proposed the erection of a baptismal font in the church of Saint Mary. The response to the doubt: "Whether the erection in

Translated by churchlatin.ai, a product of Boyne Archives

Saint Mary de Cento is permissible," was: "Affirmatively."

[*Latin ed. p. 604*]

The foundation of a baptismal font is in accordance with the Sacred Canons and Decrees, as stated in the Edict concerning the foundation of baptismal fonts in Spoleto, dated June 1848. Following this, it is not surprising that Leo XII, of blessed memory, in his Apostolic Letters concerning the arrangement of parishes in the esteemed city, dated 1824, desiring to promote the splendor of all parishes, and to introduce a more convenient, prompt, and efficacious administration of the Sacrament of Baptism, decreed that baptismal fonts should be present in each parish.

However, with regard to the privilege of maternity with which the Church of Silang is believed to be distinguished, it should be noted that a Church is said to possess true and proper maternity when, through the division of territory and people, a new parochial Church is established, which maintains a filial subordination, according to the text in the Council of Trent, cited above. Consequently, by virtue of this maternity, the pastor of the mother Church is called the Prior or Archpriest, and the filial churches are not permitted to ring their bells and sound the holy bells on Saturdays, independently of the mother Church, as stated in the Constitution of Leo X and in the Decree of the Holy Roman Church, dated December 1703.

In another, less proper, sense, a mother Church is sometimes called that which, in comparison with other churches of the same place, either excels in antiquity or possesses other honorary privileges, so that it surpasses the others in dignity, although these latter remain as if subject to it, as distinguished by Cardinal De Luca in the Decisions on Tithes, decisions 12, numbers 12 and 13, and in the Decisions of the Rota, decision 28, numbers u and following, before Crispo.

In fact, however, there appear to be no arguments to support the assertion that the Church of Silang can be considered a true and proper mother Church, especially if one considers the general rule that no parochial Church, except the cathedral, can claim the subordination of another equally parochial Church, unless it can prove that this pertains to it by privilege or by some special right, as stated in the Decision of the Rota on maternity, decision 484, in the same case, number 17.

Furthermore, it would have to be demonstrated that among its prerogatives is the power to exclude other churches from having a baptismal font; but in fact, other churches within the same vicariate already possess a baptismal font, and although it is asserted that...

[*Latin ed. p. 605*]

The erection of a baptismal font is considered to be, or the erection or completion thereof by the parish of Syllanensis, but it is recorded that no

Translated by churchlatin.ai, a product of Boyne Archives

document ever confirmed this with the consent of any of the 605 [individuals]. Nor can custom be opposed, since either this custom does not exist, or, if it does exist, various pastors testify that it is merely optional; indeed, the absence of any obligation does not constitute a prescription. Furthermore, Schmalz, in *De Praescribi*, title 26, § 2, number 7, and Engel, ibid. n. [illegible], and the Sacred Congregation in *Ariminen*, record of the year 1868, § *Manifestum*, are cited. With these and other considerations, the purpose is to resolve the doubt: Whether the erection of a baptismal font in a church is prohibited in the case of St. Anthony.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the matter, on January 25, 1873, considered the response of the pastor of Syllanensis to be affirmative, and he requested a new hearing in order that the case might be presented again, and in this new presentation, he primarily sought to refute the arguments that had been presented by the opposing party to prove the independence of his parish, which provision for the church was made not in virtue of a *Bulla* of collation, in a Vicar or Curate, but to the Parish Priest of St. Peter, for he said that this had nothing to do with the matter, since it concerned the issue of a baptismal font, without which the true independence of a parish church can stand. Moreover, if some rectors retain a baptismal font in the Vicariate of Syllan, and baptize infants in their own parish, and the pastors of Syllan have never complained that this is the case, it is said that this is because these pastors not only have had a baptismal font in their own church from ancient times, but have never belonged to the Foreign Vicariate, which cannot be said of the church of Forfi, which never had a font, and has always belonged to the Vicariate of Syllan. After these things, he strives with all his might to prove the matriculation of his church:

[*Latin ed. p. 606*]

606 Concerning the erection of a baptismal font: 1° Because the Church of Syllani has, and possesses, unity and incorporates certain Churches, and has acquired the right to collect tithes from its territories and villages, although this has been neglected due to the negligence of some parish priests. 2° Because, up to the year 1602, it has been designated as a Collegiate Church, and finally, it concludes that if, despite this, it has lost these rights, the erection of the font should be maintained, provided that at least the annual canon is paid to the mother Church, as has always been the practice by this Sacred Congregation when granting permission for the erection of a new baptismal font. After these and other considerations were presented, the formula for questioning was presented before the Sacred Congregation: "Whether it is necessary to adhere to or depart from the previous decisions in this case."

RESOLUTION. Born of the Congregation of the Council, for the cause of repeated examination on July 26, 1873, it was decided: "In adhering to

Translated by churchlatin.ai, a product of Boyne Archives

and upholding the previous decisions."

FROM WHICH ONE MAY GATHER:

I. The mother church, whether it be a cathedral or, in the strict canonical sense, a church, is such a church from which other filial churches are constituted, according to the Council of Trent, Session 21, Chapter IV, on Reform, and the Constitution *Ad audientiam* of Pope Alexander III.

II. Once this title has been admitted in a church, the pastor must be called a Prior or Archpriest, and not simply a pastor; and on Holy Saturday, the filial churches are not permitted to ring the bells independently of the mother church.

III. Even if the status of a mother church is established in the strict canonical sense, if the Bishop, considering necessity or utility, permits the erection of a baptismal font even in the filial churches, such erection shall be maintained.

[*Latin ed. p. 607*]

APPEAL 607. OF THE APPEAL, OR REGARDING THE VALIDITY OF THE DECREE OF DECEMBER 20, 1873, BASED ON INFORMED CONSCIENCE. Summary of the case. A priest, an Abbot, and a parish priest in a certain city were, through an anonymous denunciation of the most heinous crime, dragged before a secular criminal court. Since there was a great uproar about this matter in the city, and the priest was feared for his injuries and insults, the Bishop ordered him to leave the parish and reside elsewhere until the case was brought to a conclusion. The investigation finally ended on May 1st, but on June 18, 1869, the court decreed: that further proceedings should be discontinued, granting the priest the opportunity within 24 hours to either appeal or to finally conclude the case in order to prove his innocence, due to the insufficiency of the evidence. However, he did not make use of this opportunity. The hatred and infamy aroused against the priest were such that the Bishop persuaded him to voluntarily relinquish the parish, which he did, receiving an annual pension of six hundred florins, and furthermore, the right to reside in the seminary, where he could live at modest expense. While he was residing there, a new investigation into this priest was instituted by ecclesiastical authority, because a young woman reported that she had suffered certain immoral acts at his hands. This new process, further inflamed the indignation of the citizens, and the priest was forced to seek refuge in another city. He was informed of the charges by the Episcopal Consistory, and given a deadline of three weeks to present his defense. Although he presented his defense within the specified time, on July 4, 1872, an adverse judgment was rendered against

Translated by churchlatin.ai, a product of Boyne Archives

him.

[*Latin ed. p. 608*]

From that time onward, namely on the tenth day of that month, he instituted an appeal to the metropolitan court. The Bishop, who was absent when the judgment was rendered, upon his return, considered it necessary to suppress all scandal that could have been fostered by the prolonged prosecution of the case, and on the eleventh of September of the same year, by a decree based, as they say, on informed conscience, he declared: "The parish priest is absolutely and perpetually unfit to perform the care of souls, and he is to be restored to the state of deficiency, with the strict obligation of residing in a certain monastery, and abstaining from the exercise of pontifical functions." "To him, 400 florins were assigned as a pension, provided that he exhibited obedience in all things to the Bishop." Struck by this decree, the parish priest offered the most humble prayers to the Bishop, begging him to revoke it, and to transmit the records of the appeal to the metropolitan court, so that the matter, which had been begun, could be promptly concluded. But these prayers were rejected. Therefore, he presented a petition to the Most Holy Lord, requesting the revocation of the decree based on informed conscience, and seeking absolution from the censures imposed upon him, so that the prosecution of the case could proceed in the appeal before the metropolitan. The aforementioned prayers were, as is customary, transmitted to the Bishop, so that he might inform the Sacred Congregation and reveal his intentions. Upon receiving his response, the case was presented among the petitions. A concise summary of the arguments. THOSE THAT ARE FAVORABLE TO THE BISHOP. The decree of the Council of Trent, Session 14, chapter 1, concerning reforms, states: "It is more honorable and safer for a subject to render due obedience to superiors in a lower ministry, than to seek higher positions with the scandal of superiors; to him, to whom the ascent to the sacred orders has been denied by his prelate for any reason..."

[*Latin ed. p. 609*]

Furthermore, even if the appellation [appeal] has been instituted for some hidden crime, whether secretly or publicly, even extrajudicially, or if someone has been suspended from his orders or degrees or ecclesiastical dignities, no permission will be granted to promote himself against the will of the prelate, nor to restore him to his former orders, degrees, dignities, or honors. With these premises, the Bishop asserts that he has been moved by unavoidable reasons to impede the prosecution of the appellation of the Parochus [parish priest]. Indeed, the matter concerns something which the Apostle does not even allow to be named. The uproar among the citizens grew from day to day. One thing and another, already in the further proceedings of the investigation, seemed to connive at the crimes, and, in the

Translated by churchlatin.ai, a product of Boyne Archives

end, would bring disgrace to the entire order. He [the Bishop] follows this by stating that he has shown himself to be lenient in defining the penalties, since it is well known in law that, for some crime committed, the person is unfit for the care of souls. Indeed, from the very nature of the deed, everyone can see that the fault exists. How much shame the Parochus, of whom we are speaking, suffers, and how unworthy he is of the use of pontifical vestments, after what is contained in the procedural records. The sum of 400 florins, that is, one thousand Roman lire, remains assigned to him. Whereas the diocesan statute provides for a pension of 300 florins for a priest in need, with the right to use the seminary at a lower price for food and lodging. Furthermore, the assignment of a spiritual ministry and emolument exclusively pertains to the imposition of a term of penance in some monastery, at the discretion of the Bishop. It is also not without reason that the crimes are notorious and public. Indeed, the authors, from the words of the Council of Trent, deduce that, because of some hidden crime, the Bishop has the power, even if it has been made public, to proceed, not only in cases of public crimes, but also in cases of hidden crimes. Furthermore, setting aside the question of which actions are considered to be within the jurisdiction of the law, it cannot be asserted that everything that has happened to the Parochus enjoys publicity. But, in Act, volume VII, page 82, it is stated that only one [person] committed public acts of shame.

[*Latin ed. p. 610*]

The crime of concealment, designated as number 610, is sufficiently concealed to warrant a decree based on informed conscience. Hear, therefore, Pignat., vol. 7, canon 8, no. 3 (therein). To the extent that censures imposed for multiple offenses are not sustained for each of those offenses individually, it is nonetheless sufficient that they are proven based on only one of them, since each one is sufficient to incur those censures. Furthermore, against the Parochus, there is no better omen than the fact that the same tribunal has rendered a double judgment against him for the same crime. For the judgment of the Consistory, with due regard for the order of law, was rendered in the absence and without the knowledge of the Bishop; whereas, a single Bishop can render a judgment based on informed conscience, Monacell., 6, note 3, part 2, title 2, formula.

WHAT REMAINS: The Consistory, favoring the same Parochus, established a tribunal with its own Bishop, as Garcia states, *de Beneficiis*, part 3, chapter 8; Tomassin, *de Offic. Vicarii*, 1, no. 40, chapter 2; Romana, *de Appellat*, 6, g. Therefore, it appears that the Bishop, in rendering a second judgment after having already rendered a first judgment through his own tribunal, is acting contrary to his own precedent, which is entirely uncivil. Consequently, a decree based on informed conscience, as if intended to undermine the judge to whom the appeal is directed, seems to threaten to collapse, Leuren., formula title 28, book 2, Decret., question 1134; Bouix, p.

Translated by churchlatin.ai, a product of Boyne Archives

2, chapter 2, on appeals, question 2; Eccles., *de Iudiciis Eccles.*. Moreover, and in addition to this, the Bishop himself confesses that he was led by indignation of the citizens, aroused by the publicity of the crimes, Conc. Trid., Session 14, chapter 1, *de ref.*, to proceed extrajudicially. However, it is an established principle of law that the cited passage from the Council of Trent, when it speaks of depriving someone of a right acquired concerning hidden matters, does not grant this power to Bishops concerning public crimes. In truth, whatever two more recent authors may argue, the Bishop, namely Lucionen, in his work entitled *des sentences episcopales dites de conscience informée*, and D. Bouix, *de iudiciis*,...

[*Latin ed. p. 611*]

Canon 611 of the Church declares, with sound legal reasoning, that when a crime is public, it must be punished by a public sentence; otherwise, the order of justice would not be restored to its former state. Historical documents demonstrate that Bishops have only used the censure of ”informed conscience” for hidden offenses, as indicated by the Council of Trent, chapter. Therefore, such decrees are called ”decrees of informed conscience.” The Doctors are in agreement with this view, as evidenced by Barbosa in *De Jure Canonico*, book 1, chapter, section 4; Pirhing, in *De Jure Canonico*, volume 1, treatise 2, section 1, number 13; Pignat, volume 1, consultation 261, number 1; Monacell, *Formulæ*, volume 1, letter 13, form 3, number 2; Gaudentius, doubts 8, concerning Genoa; *De Visitatione*, section 6, number 3; Benedict XIV, *De Praelaturis*, book 2, chapter 8, number 3 and following; and Lucidi (whom we lament is deceased), in *De Visitatione Sacrorum*, volume 1, *De Synodo Dioecesana*, recently published by the learned LL. part 1, section 8, number 273, which advises Bishops to be careful not to, with a false understanding, impose a suspension based on ”informed conscience” for something that is already public and notorious, because such a decree is not valid, as was demonstrated in the case of the irregular and private benefice in Saint Agatha of Gothia, on February 26, 1833. Pope Benedict XIV, in the Apostolic Constitution *Ad Militantis Ecclesiae*, dated April 1, 1742, which recounts various cases in which an appeal is not granted, includes sentences based on ”informed conscience” with these words: ”Also, from the denial of Holy Orders, or advancement to higher orders; as also against suspensions for hidden crimes, or based on informed conscience, according to the disposition of the Sacred Council, session 14, chapter 1, concerning appeals.” Here, the words of the Pope – ”for hidden crimes” – and – ”based on informed conscience” – have the same meaning. For when the particle ”or” is used, the two words are not contrary, but similar, and have an explanatory and declarative force, and are equivalent to ”that is to say”: Barbosa, in his frequent usage, demonstrates this in sections 363, number 7, and 373, number 6. Furthermore, more penalties

Translated by churchlatin.ai, a product of Boyne Archives

have been imposed in this case by the Bishop than are permitted by chapter 1, session 14, concerning appeals, which grants certain powers to Bishops. For...

[*Latin ed. p. 612*]

Appellation 612, granted to Bishops by that very canon: 1. to prohibit appeals, 2. to suspend from orders, or from ecclesiastical grades or dignities. It is indeed impossible to advance further in the interpretation, because when a matter is permitted, it is not concerning penalties, and everyone knows that a strict interpretation is to be observed in such cases. Moreover, even these suspensions cannot be of perpetual force. Indeed, it has been received, by practice of the Holy Council Congregation, at least in recent times, that, as is observed in Lucionen, the suspension of April 8, 1848, §, that if, however, perpetual and indefinite suspensions, which may be called privations, are not to be imposed, they are merely admonitions, and other mere formalities, unless prescribed by the solemn sessions of December 21, chapter 6. The Holy Congregation expounds a case similar to ours in the cause of the Bishop of S. Agathae, of the Goths, of February 26, 1853. Having been informed, the Archpriest, Curate D'Ambrosio, had suspended him from the dignity of Archpriest, from the care of souls, and from the exercise of the sacred orders, without any determination of time. The validity of this sentence was challenged by D'Ambrosio on two grounds: 1. that the offense, for which the suspension was imposed, was public; 2. that the penalty was of indefinite duration. The question posed was: Whether the validity of the suspension is established in this case? The response was: Negatively, saving the right of the Bishop to proceed according to law. RESOLUTION. On December 20, the Holy Congregation of the Council, having knowledge of the matter, decided to write again in 1873: The decree from the date in question does not prevent proceedings in the case of appeal, as, to what extent, and before whom, according to law. FROM WHICH YOU MAY GATHER: 1. That the Bishop, with his Consistory or Court, constitutes one and the same tribunal. Therefore, 2. Anything done by the Consistory, as well as anything done by the Bishop concerning the sentence of the Consistory, is not to be considered an attack against the judge to whom the appeal is directed.

[*Latin ed. p. 613*]

613. The appeal presented is decided, whether the appeal or the right of appeal is pending. Therefore, it is not permissible for the Bishop, through a decree based on informed conscience, to prohibit the appeal or the prosecution of the appeal against a sentence pronounced by the Tribunal.

4. A decree of suspension issued based on informed conscience for public crimes shall not be upheld.

5. The penalties added to the suspension, inflicted through a decree

Translated by churchlatin.ai, a product of Boyne Archives

based on informed conscience, are invalid.

6. Indeed, the suspension itself, imposed extrajudicially, cannot be perpetual.

7. Suspensions without any specification of time shall be considered perpetual.

REGARDING THE DEPUTIES OF THE SEMINARY.

January 25, 1873. Summary of the matter.

The Bishop reported to the Sacred Congregation that "for the temporary administration of his Seminary, he used a council of four deputies, according to the prescription of the Holy Council of Trent." However, since one of them, chosen by the clergy of the city, had obtained a canonical benefice in the Cathedral Church, and for several years, of the four deputies for the administration of the Seminary, three were canons of the Cathedral Church, and only one was from the clergy of the city. Therefore, he inquired: "Can a deputy chosen by the clergy for the administration of the Seminary, while holding the office of canon, continue in that office perpetually, or can he be removed from it?"

OBSERVATIONS FROM THE OFFICE.

The Council of Trent, Session XXIII, Chapter 18, regarding the deputies of the Seminary, states: "with the advice of two from the Chapter."

[*Latin ed. p. 614*]

Regarding the appointed representatives, 614, one chosen by the Bishop, and one by the Chapter itself, and also from the Clergy of the City, of whom one's election pertains similarly to the Bishop, and the other to the Clergy, etc. The Bishop is required to seek the counsel of these appointed representatives or consultants in matters concerning deductions from individual benefices for the support of the Seminary, and in the union of benefices, as expressly decreed by the aforementioned Decrees, cited, chapter 18. Likewise, the Bishop ought to make use of the counsel of these same individuals, both in establishing the rules of the Seminary, and in the election, admission, and expulsion of young men, in the appointment of teachers and books to be read, in the visitation and the management of the temporal affairs of the Council. Thus, the Holy Council declared, as Ventriglia testifies, part 2, note 2Ç, § Unie. n. 6, ç and io; Crispin., de Visitat, part i, § 31, n. 6; Monacell., part i, title 12; and in the proceedings at Tricarico, March 24, 1736. Cardinal Cavalchini, in his exposition on the Administration of the Seminary, under the date. The Council of Trent, therefore, ordered that two be chosen from the Cathedral Chapter and two from the Clergy, it seems to have been so that the preponderance of the Cathedral

Translated by churchlatin.ai, a product of Boyne Archives

Chapter over the Clergy, and vice versa, might be avoided, that is to say, that a certain equality might be maintained in the administration of the temporal affairs of the Seminary; especially since it is a matter of the union of benefices belonging to the Chapter or to the Clergy, of taxes to be paid by the Chapter, or by the Clergy, for the Seminary. Furthermore, all of these things would be rendered void if more than two representatives were chosen from the Chapter, and consequently, if one chosen by the Clergy holds a canonry in the Cathedral, he is considered one of the representatives of the Seminary. The intention of the Holy Council of Trent was entirely to eliminate this, that is to say, that the representatives chosen by the Clergy should be entirely distinct from the representative chosen by the Chapter. Indeed, such an intention would entirely vanish if a representative chosen by the Clergy, having obtained a canonry, were to continue in his office. However, on the other hand, it has been observed that such representatives are to be permanent, and not removed from this office without cause.

[*Latin ed. p. 615*]

Concerning the designated officials of the seminary, as it is possible according to the resolution of the Holy Congregation of Councils, in Cremona, on September 5, 1602. A *RESCRIPTUM* was issued. After these matters were presented and discussed before the Holy Congregation of Councils on January 25, 1873, the following *rescriptum* was issued: By the attainment of a canonry in the Cathedral church, the office of a designated official ceases from the clergy of the diocese. THEREFORE, IT IS UNDERSTOOD THAT: I. There should be four designated officials, whose counsel the Bishop must use in the administration of temporal affairs, that is, in the union of benefices with the seminary, in removing difficulties by which the instruction or preservation of the seminary is disturbed, also in the expulsion and appointment of ministers, and in making expenses. II. Of these, two must be chosen from the canons of the Cathedral church, one by the Bishop and the other by the Chapter, and two must be chosen from the clergy, one also by the Bishop, and the other by the clergy. III. Although their office is perpetual, nevertheless, if a designated official obtains a canonry in the Cathedral church, he ceases at the same time from the office of designated official. REGARDING THE PREEMINENT OFFICES. On June 28, 1873. A summary of the facts. In the major church, there exist three dignities: the Archdeacon, the Proposit, and the Archpriest, who perform ecclesiastical functions in such order that those which on solemn days belong to the Bishop, the Archdeacon fulfills: thus, the Nativity of the Lord, the Resurrection, and the feast of Pentecost are celebrated by the Proposit, while the acts of the second day of the same solemnities are celebrated.

[*Latin ed. p. 616*]

616 The preliminary acts pertaining to solemnities are to be carried out

Translated by churchlatin.ai, a product of Boyne Archives

by the Archpriest. However, if the Archdeacon is absent or infirm, the Vice-Prior takes his place; and in his place, the Archpriest, and then other Canons, in succession. Indeed, when the Prior, Angelus S., had obtained Franciscus Mariam R. as his Coadjutor, designated by the Supreme Pontiff through Papal Bulls on May 9, 1872, a dispute arose between the Prior's Coadjutor and the Archpriest concerning the stall and functions belonging to the Prior; for since the Archdeacon was unable, due to infirmity, to perform those duties which by right belonged to the Bishop, the Prior's Coadjutor, being of his own jurisdiction, took the stall and all the functions and acts before the Archpriest, holding the first rank in the absence of the Archdeacon. Bearing this grievance in mind, the Archpriest presented a petition to His Holiness, so that his rights might be restored, both concerning the stall and concerning the exercise of functions pertaining to the first rank. Upon receiving this petition, it is customary for the Ordinary to, after hearing the Chapter and those with an interest, to report on the merits of the proposed questions; and upon receiving the response, a decree is issued and placed in the records of the Sacred Congregation of Councils.

A concise summary of the arguments.

THOSE ARGUMENTS WHICH SUPPORT THE COADJUTOR.

It has been established in law that the Coadjutor is to be considered in all matters, and if a Coadjutor holds a Dignity, he certainly possesses the privileges thereof. It has not been observed that this position, these honors, and these offices are to be disregarded, since the Sacred Roman Congregation gave a response on June 0, 1657, in a similar case, stating that the Coadjutor is to be preferred to all Dignities in the performance of duties pertaining to the Coadjutorship, but is to be placed last in sessions, subscriptions, etc.; and this was also confirmed in Fermo.

[*Latin ed. p. 617*]

Praeeminentiarum, 5 September 1637; concerning the place to be occupied, the Most Holy Congregation in Bologna, on 5 March 1757, decreed that the coadjutor should sit after all dignitaries and before all canons. The Doctors teach that, in determining the place, the honors, rights, which belong to the coadjutor, the various customs of the place, and the tenor of the coadjutor's letters must be observed. If, however, all custom is lacking and nothing can be deduced from the Apostolic Letters, this distinction was introduced: where various dignities do not have a fixed place, but gradually ascend, the coadjutor must sit and proceed before all canons, and after all dignitaries; but if fixed places are assigned to the dignities, the coadjutor must occupy the place of the coadjutor, thus the Most Holy Congregation in Messana, on 9 November 1667. From this distinction, all apparent contradictions between certain decrees of the Most Holy Congregation

Translated by churchlatin.ai, a product of Boyne Archives

are removed. Having considered these criteria, the coadjutor contends for himself the very Apostolic Letters, for in them it is written: "You, as long as he lives, and as long as he holds the aforementioned office, shall be a perpetual and irrevocable coadjutor in the government and administration of said office, and of all its affairs, goods, and rights, both spiritual and temporal, with full and every kind of power, authority, and faculty to say, do, and exercise all and each thing which pertains to such an office by law, custom, privilege, or otherwise... so that... you, in place and stead of said Angel, as a true Prefect in said Major Church, called Coadjutor, shall serve said Major Church in divine matters and otherwise, and shall personally reside among them, and shall fulfill and support all and each of the obligations of the aforementioned office, which were incumbent upon the aforementioned Angel, and shall have a stall in the choir... and shall also enjoy, possess, and partake of all and each of the privileges, immunities, and exemptions, honors, favors, and prerogatives, both within and without said Major Church, which the aforementioned Angel enjoys, possesses, and partakes of, by reason of said office..."

[*Latin ed. p. 618*]

618 From these words, it is clearly evident that the Coadjutor has the right to occupy a stall before the third dignity, and furthermore, to perform those functions which would properly belong to the first dignity in the absence of the Archdeacon. For, as we have indicated, in the Major Church C., the first dignity, or in any case, in the absence of the Bishop, has the right to claim those functions which belong to the Bishop; and in the absence of the first dignity, the same functions are claimed by the second, that is, the Provisor; and when the Provisor is hindered, the functions devolve to the Archpriest. But, according to the Bullae, the aforementioned Coadjutor succeeds the Provisor in the government and administration with full, free, and every kind of power, ability, and authority to do, say, and perform all things and each thing... so that he is to be considered as the true Provisor in the said Major Church, with all the rights and privileges, offices and duties pertaining to that dignity. Therefore, according to the tenor of the Apostolic Letters, by which the Coadjutorship was conferred, it is the right of the Coadjutor to sit in a stall before the third dignity, and to perform all those functions which pertain to the Coadjutor, if he were present with the choir: since everything belongs to the Coadjutor which is proper to a Coadjutor according to Pontifical Constitution. And it does not seem that any limitation can be applied to this argument, except insofar as those things are proper to him by reason of his office. For it would be the same thing to say that the Coadjutor has rights, and to deny what had been written before. Moreover, since the Bullae uniformly and without distinction grant to the Coadjutor all the rights which belong to a Coadjutor, it necessarily follows that he must possess those rights, by which the Coadjutor is empowered.

Translated by churchlatin.ai, a product of Boyne Archives

Barbosa, Sacred Congregation of Rites, Decree of February 14, 1615. Indeed, a similar doubt arose in the Church of Patavina, in which the first dignity was the Archpriest, and the second was the Archdeacon, whether the Coadjutor of the Archdeacon, in the absence of the Archpriest, could and should exercise those functions, perform all acts, and exercise all jurisdictions.

[*Latin ed. p. 619*]

619 The Archdeacon himself would perform and exercise these duties, or rather, these functions and jurisdictions, in the absence of the Archpriest, not by the Archdeacon's Coadjutor, but by lower offices within the same Church, and by other canonically appointed individuals, gradually. The Sacred Congregation of Rites, having considered the letters concerning the Coadjutor, decided and declared: In the absence or impediment of the Archpriest, it pertains to the Archdeacon's Coadjutor, according to the form of those same letters, to perform and exercise those functions, acts, and jurisdictions which the Archdeacon himself would perform and exercise, whatever the law may be, if he were present. Otherwise, the matter could not be. For when any custom is lacking, the matter must be judged according to general principles of law. Furthermore, although it is generally true that the Coadjutor, while the Coadjutor lives, ought to sit in the last place after all the Canons, and when he performs certain functions that belong to his Coadjutor, he ought to perform them in the very last place, as stated by the Sacred Congregation in Collimò on September 16, 1606, and in Patavina on December 10, 1606, nevertheless, this rule does not deprive the Coadjutors of offices of their office. Indeed, these should certainly occupy the same seat that their Coadjutors would occupy if they were present, and they precede the Canons and lower offices. Thus, the Sacred Congregation of Rites, in Neritonen on October 22, 161Ç, and in Brundusina on May 2Ç, 161c, teaches that the Coadjutors of offices should also precede the Curates, Rectors, and Priors of parochial churches, just as the true Canons do. The same Sacred Congregation, in Pistorien, Romana, p. 10, vol. 1, can be consulted on this matter, dated March 13, 1618, and the Sacred Rota Decis, pp. n. 1. Thus, it follows that there must be a juridical difference between the Coadjutors of the Canons and the Coadjutors of offices, so that the latter, sitting in the stall of the office, can and must perform the functions pertaining to the office of the Coadjutor; whereas the Coadjutors of the Canons, since they sit after all the Canons, are not admitted to the honorary functions of the Canons, according to the tradition and the learned judgment of Pignatelli and others in Consult. 183, which contains resolution number 3 of the Congregation.

[*Latin ed. p. 620*]

Regarding 620 inquiries from the Sacred Roman Rites concerning Padua, dated February 14, 1615, and December 3, 1616, and concerning Neritonen,

Translated by churchlatin.ai, a product of Boyne Archives

dated October 12, 1619, which address the terms of Coadjutors and not of Canons, it is stated that, provided the Coadjutor is impeded, the right to perform the functions devolves to the Coadjutor, and not to the Canon succeeding him in Tournon. Furthermore, in the case under consideration, the Dignities hold a fixed and distinct place among themselves; therefore, the Coadjutor, according to the aforementioned decree, exclusively with regard to other Dignities, must exercise all acts, jurisdictions, and possess all the prerogatives that the Coadjutor would have. Therefore, since in the Major Church, the Prior is truly considered the second Dignity, and since a Coadjutor has been instituted to this Priorate by the Apostolic See with the very same rights, which the Coadjutor enjoys, possesses, and obtains; it is clearly apparent that he is also, from this very point, justly protected.

CONCERNING THE RIGHTS OF THE ARCHIPRESBYTER. The Archipresbyter, in order to defend his rights, primarily presents the resolution of the Sacred Rites Congregation, dated March 15, 1757, of which this is the substance. In the Metropolitan Church of Bologna, when the first Dignity was the Archdeacon, and a controversy arose: whether the modern Archdeacon, as Coadjutor, should sit last after all the Canons; and whether, in the absence of the Archdeacon, the same Coadjutor should exercise those functions which the Archdeacon himself would perform if present, or whether, if the Archdeacon were present, he should perform them, after mature discussion and having heard, etc., it was decided and declared: that the aforementioned Archdeacon Coadjutor should sit after all the Dignities, and before all the Canons, both in the absence and in the presence of the Coadjutor. Furthermore, in the absence of the Archdeacon, and of the inferior Dignities, or if the Archdeacon is impeded, those functions, acts, and jurisdictions do not pertain to other Canons of the same Church, but to the Coadjutor, to exercise those things which the Archdeacon himself would do and perform if he were present. It is indeed most wisely decided and provided, concludes the Archipresbyter. Coadjutors, indeed, are obligated to do...

[*Latin ed. p. 621*]

All the functions, 621 acts, and jurisdictions pertaining to Coadjutors are exercised by the superiors. However, the modern Coadjutor of the Church, C, exercises those things which are not those of a Praepositus Coadjutor, but of an Archdeacon; and in the absence of the Archpriest, who, according to the Benedictine declaration, ought to sit before the Coadjutor, he also ought to have precedence in all things by law. Nor is the argument drawn from the Bullae of such weight as to entirely define the nature of the Coadjutor's office by reason of the Bullae. The Coadjutor is bound to use, enjoy, possess, and have the benefits of [certain rights]; indeed, the limitation of office in the clause "provided that these do not pertain to him" is valid, and likewise he ought to have, respectively, and no clause ought to be

Translated by churchlatin.ai, a product of Boyne Archives

considered useless, nor any word omitted of its proper force in the apostolic writings. Furthermore, it is observed that Coadjutors truly act as fictitious persons, since they feel [certain things], and therefore cannot, in any way, be preferred to true canonical dignities. However, this argument does not destroy the distinction between the effects usually attributed to a Coadjutor and the effects which the canonical dignity of a Coadjutor produces, for as in the first case all the rights of the canonical dignity are communicated to the Coadjutor, so in the second, the rights which are proper to the dignity are communicated. Moreover, the functions which the modern Coadjutor has arrogated to himself are not those of the dignity of Coadjutor, but of the primary dignity. Nor is it reasonable to argue that the Coadjutor is entitled to exercise these rights by mandate of the coadjutor, if this right, according to the aforementioned Benedictine declaration, devolves upon the dignity or the subsequent canonical order by the ministry of law, so that the Coadjutor cannot delegate his personal office, lest he injure the rights of a third party, according to what the Holy Congregation of Rites decreed in Matharanen, in cap. 2720. Decree Auth. S. R. Congr. De- If, on the other hand, it is asked what rights are communicated to Coadjutors by coadjutors, the prompt answer is, the same.

[*Latin ed. p. 622*]

Concerning the privileges, it is proper to mention only those which pertain to the service of the choir, as Garzas states in *De Beneficiis*, page 4, article j, number 140. With these and other considerations in mind, the following doubts are to be resolved:

1. Whether a modern Coadjutor of a higher rank in the Church should have a seat in the choir, or whether he should have a stall before the third rank.

2. Whether the aforementioned Coadjutor is entitled to all the functions, acts, and jurisdictions that belong to the Archdeacon, and whether, in the case of an impeded Archdeacon and in the absence of the Prefect (by law, preceding the aforementioned Coadjutorship), these are transferred to the Archpriest or to the Coadjutor.

RESOLUTION. The Holy Congregation, having considered the matter, decided on June 28, 1873, to respond as follows:

To I: The Prefect's Coadjutor ought to sit after all ranks and before all Canons, both when the Coadjutor is present and when he is absent.

To II: Affirmative, in favor of the Coadjutor.

THEREFORE, IT IS UNDERSTOOD:

I. In determining the place, honors, and rights that belong to Coadjutors of Chapters, both the various local customs and the tenor of the Apostolic Letters by which the Coadjutorship is conferred must be observed.

Translated by churchlatin.ai, a product of Boyne Archives

II. If, however, all custom is lacking and nothing can be gleaned from the Letters, then the distinction established by the Apostolic See applies, namely, that the Coadjutor must sit and proceed before all Canons and after all ranks.

III. However, it does not pertain to the Coadjutor to exercise those functions, acts, and jurisdictions that belong to other lower ranks or Canons of the same Church, which those ranks themselves would perform and exercise if they were present.

[*Latin ed. p. 623*]

Concerning either the functions, acts, and jurisdictions which belong to the office of the Coadjutor, or those which, by the law of devolution, pertain to the Coadjutor himself. FROM THE HOLY CONGREGATION OF RITES in Romana. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Anthony Baldinucci, a priest of the Society of Jesus. CONCERNING WHETHER it can be affirmed that the virtues of Faith, Hope, and Charity in God and in neighbor, as well as the Cardinal virtues of Prudence, Justice, Fortitude, and Temperance, and their associated qualities, were present in a heroic degree in this man, both in his life and in the circumstances of his death? DECREE: "As Christ the Lord teaches, every tree is known by its fruit. Therefore, the illustrious Religious Orders, from which so many men, and even women, endowed with great power of word and deed, distinguished by doctrine and sanctity, have arisen for the benefit of the Holy Church, and continue to arise day by day, certainly merit great commendation and praise. Among these, the illustrious Society of Jesus stands out, against which the powers of darkness more boldly hurl their darts, and which has never failed to turn those very darts back against the infernal enemies. From this same Society now emerges the Venerable Anthony Baldinucci, worthy to be compared to his glorious confreres already numbered among the blessed in the heavenly ranks, namely, John Francis de Regis and Francis de Jerome. For almost twenty years, he traveled through cities and towns, preaching the Kingdom of God, and healing those of contrite heart, so that, through his words, aided by divine grace, countless sinners were turned from the path of perdition to the right path of salvation, through tears of repentance. In carrying out this arduous ministry, he spared no labors, yielded to no hardships, but rather, consumed by the afflictions of the flesh, the Venerable Servant of God was a most excellent example of all virtues, until the very last hour of his life, when he breathed his last during a certain sacred expedition. Concerning his sanctity, it was certainly most evident that..." this was the argument presented to the Signature Commission.

[*Latin ed. p. 624*]

624. The decrees regarding the introduction of this Cause were com-

Translated by churchlatin.ai, a product of Boyne Archives

pleted by the Supreme Pontiff Benedict XIII of blessed memory, scarcely nine years having elapsed since his happy death, which occurred on the seventh of the Ides of November in the year 1717. Subsequently, the records of the Apostolic Process were examined in Rome, Ostia, and Florence; once these were completed and transmitted to the Congregation of Sacred Rites, they were duly approved by that body. Afterwards, judgment was initiated concerning the virtues of the Venerable Anthony, specifically in the Preliminary Assembly presided over by Cardinal Charles Augustus of Reisach of blessed memory, on the ninth of May in the year 1857; then again, it was considered in the Preparatory Assembly convened at the Vatican Basilica on the sixth of the Ides of February in the year 1870; finally, this judgment was concluded in the General Congregation before His Most Holy Lordship, Pope Pius IX, in the same Vatican Basilica, on the fourteenth of the Calends of December of the aforementioned year 1873. At that time, the Most Reverend Cardinal Constantine Patrizi, Bishop of Ostia and Velletri, Dean of the Sacred College, and Prefect of the Congregation of Sacred Rites, proposed the question: "Does it appear that the theological virtues of Faith, Hope, and Charity in God and in one's neighbor, as well as the cardinal virtues of Prudence, Justice, Fortitude, and Temperance, along with their corresponding virtues, were present in a heroic degree, in this case, and to the effect of what is being considered, in the Venerable Servant of God, Anthony Baldinucci?" Then, the Most Reverend Cardinals and the Consultor Fathers expressed their opinions. However, the Blessed Father did not wish to immediately bring this judgment to a conclusion, but encouraged those present to join him in fervent prayers, imploring divine light and counsel from the Holy Spirit. "Finally, he decided to pronounce this judgment on this Sunday after the Nativity of the Divine Child, which also coincides with the feast of the blessed martyrs Innocent." "Therefore, after having offered the salutary Host in the private chapel of the Apostolic Palace, he requested this more solemn setting, where, with the Most Reverend Cardinal Constantine Patrizi, Prefect of the Congregation of Sacred Rites and Relator of the Cause, along with the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, and myself, the undersigned Secretary, present, he solemnly declared: 'It appears that the theological virtues of Faith, Hope, and Charity in God and in one's neighbor, as well as the cardinal virtues of Prudence, Justice, Fortitude, and Temperance, along with their corresponding virtues, were present in a heroic degree, in this case, and to the effect of what is being considered, in the Venerable Servant of God, Anthony Baldinucci.'" "This decree was to be published and recorded in the Acts of the Congregation of Sacred Rites. On the fifth of the Calends of January in the year one thousand eight hundred and seventy-three." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of S.

Translated by churchlatin.ai, a product of Boyne Archives

R. C. L. * S. D. Bartolini, Secretary of S. R. C.

[*Latin ed. p. 625*]

Decree 625 from Rome. Concerning the Beatification and Canonization of the Venerable Servant of God, Anne Marie Taigi, Tertiary of the Order of Discalced Carmelites of the Most Holy Trinity, for the Redemption of Captives. DECREE. "Whereas, on the thirteenth day before the Kalends of July in the year 1873, Our Most Holy Lord Pope Pius IX, with paternal benevolence, granted that an examination be held in the Ordinary Congregation of Sacred Rites, without the intervention or vote of Consultors, regarding the Fame of Holiness of life, virtues, and miracles in general, of the aforementioned Venerable Servant of God, Anne Marie Taigi; and whereas, the Reverend Father Andrea from Saint Agnes, a professed priest of the Order of Discalced Carmelites of the Most Holy Trinity for the Redemption of Captives, and Postulator of the Cause, and also the Reverend and Right Reverend Cardinal John Baptist Pitra, Promoter of this Cause, proposed the following question for discussion at the Ordinary Congregations of Sacred Rites held on the designated day, namely: Whether it is established that the Apostolic Process constructed in the City regarding the Fame of Holiness of life, virtues, and miracles in general, of the aforementioned Venerable Servant of God, is valid and relevant in this case and to the effect of what is being considered? And after mature deliberation by the Eminent and Reverend Fathers entrusted with the preservation of the Sacred Rites, and after hearing the voice and written opinion of the Reverend Father Lawrence Salvati, Auxiliary Promoter of the Holy Faith, it was judged that the answer should be: Affirmative. On the 7th of February, 1874. "These matters having been faithfully reported by the undersigned Secretary to Our Most Holy Lord Pope Pius IX, His Holiness approved and confirmed the Decree of the Sacred Congregation. On the 26th of the same month and year." C. Card. Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. D. Bartolini, Secretary of the Sacred Congregation. Decree concerning the Beatification and Canonization of the Servant of God, John Eudes, Apostle Missionary and Founder of the Congregation of Jesus and Mary, and also of the Order of the Blessed Virgin Mary of Charity Refuge. DECREE. "On the seventeenth day before the Kalends of July in the year 1871, Our Most Holy Lord Pope Pius IX, with paternal benevolence, granted that a question from the Commission for the Introduction of the Cause of the aforementioned Servant of God, John Eudes, be considered in the Ordinary Congregation of Sacred Rites, without the intervention or vote of Consultors, although less than ten years had elapsed from the date of the presentation of the Ordinary Process in the Acts of the Sacred

Translated by churchlatin.ai, a product of Boyne Archives

Congregation, volume VII, page 82, number 40."

[*Latin ed. p. 626*]

626. After decrees of the Congregation of Rites and writings of the same Servant of God, not having been sought out and examined, His Eminence and Most Reverend Cardinal John Baptist Pitra, Promoter of this Cause, at the request of Reverend Father Angel Le Doré, Superior General of the Congregation of Jesus and Mary, and Postulator of this Cause, having considered the letters of petition from several men of ecclesiastical distinction, in the Ordinary Sessions of the Congregation of Sacred Rites held today in the Vatican, proposed the following question for discussion: Whether a Commission for the Introduction of this Cause should be signed in this case and for the purpose in question? And the Sacred Congregation itself, after mature deliberation, and having heard the voice and writings of Most Reverend Father Lawrence Salvati, Coadjutor to the Promoter of the Holy Faith, decided to respond: Affirmative, that is, the Commission should be signed, if it pleases the Most Holy [Father]. On February 7, 1874. "Subsequently, a faithful report of the above was made to the Most Holy Father, our Pope Pius IX, by the undersigned Secretary. His Holiness approved and confirmed the judgment of the Sacred Congregation, and signed the Commission for the Introduction of the Cause of the Venerable Servant of God, John Eudes, aforementioned, with his own hand. On the 26th day of the same month and year." C. Card. Patrizi, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. "S. D. Bartolini, Secretary of the Sacred Congregation. Rome. Regarding the Beatification and Canonization of the Servant of God, Elizabeth Canori Mora, Tertiary Order of Discalced Carmelites of the Most Holy Trinity, Redemptor Captivorum. DECREE. "On the thirteenth day before the Kalends of August, in the year 1871, when the Most Holy Pope Pius IX, with paternal benevolence, ordered that a question regarding the signing of the Commission for the Introduction of the Cause of the aforementioned Servant of God, Elizabeth Canori Mora, be considered in the Ordinary Session of the Congregation of Sacred Rites, without the intervention or vote of Consultors, although less than ten years had elapsed since the presentation of the Ordinary Process in the Acts of the Congregation of Sacred Rites, and the writings themselves had not been sought out and examined; the undersigned Cardinal, Prefect of the aforementioned Sacred Congregation, and Promoter of this Cause, at the request of Father Anthony Multon, alumnus of the Congregation of Christian Schools, and Vice-Postulator of this Cause, having considered the letters of petition from several Cardinals of the Holy Roman Church, and from numerous Archbishops and Bishops, as well as from other distinguished men, in the Ordinary Sessions of the Congregation of Sacred Rites held

Translated by churchlatin.ai, a product of Boyne Archives

today in the Vatican,

[*Latin ed. p. 627*]

The following question was proposed for discussion, according to Decree 627: Whether the Commission for the Introduction of this Cause should be signed, in this case and to the effect of what is being considered? And the aforementioned Sacred Congregation, after mature deliberation and having heard the opinion, both orally and in writing, of the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, decided to respond: Affirmative, that is, the Commission should be signed, if it pleases the Most Holy [Pope]. February 7, 1874. "Subsequently, a faithful report of the above was made to the Most Holy Pope Pius IX by the undersigned Secretary. His Holiness approved and confirmed the decision of the Sacred Congregation, and with his own hand signed the Commission for the Introduction of the Cause of the Venerable Servant of God Elizabeth Canori Mora, aforementioned. On the 26th of the same month and year." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. S. D. Bartolini, Secretary of the Sacred Congregation.

Regarding the confirmation of the cult rendered to the Servant of God Alpaida, now called Saint, from time immemorial. DECREE. "In the Ordinary Assemblies of the Sacred Rites, held today at the Vatican, by the Most Reverend and Right Reverend Cardinal John Baptist Pitra, of this Cause, the following question was proposed: Whether the judgment of the delegated judge, from the Reverend Archbishop of Sens, concerning the aforementioned cult rendered to the said Servant of God, or concerning the case exempted from the Decrees of the Blessed Pope Urban VIII, should be confirmed in this case and to the effect of what is being considered? The Most Reverend Fathers, entrusted with the preservation of the Sacred Rites, after mature deliberation, and having heard the opinion, both orally and in writing, of the Reverend Father Lawrence Salvati, Assistant Promoter of the Holy Faith, decided to respond: Affirmative. February 26, 1874. "Which, through the undersigned Secretary, were faithfully reported to the Most Holy Pope Pius IX. His Holiness approved and confirmed the response of the Sacred Congregation. February 7, 1874." C. Card. PATRIZI, Bishop of Ostia and Velletri, Prefect of the Sacred Congregation. L. S. D. Bartolini, Secretary of the Sacred Congregation.

[*Latin ed. p. 628*]

With the deepest sorrow, we announce that the Reverend Father Peter Avanzini passed away on April 7th. This event, both sudden and grievous for us, is, for him, a cause for joy. For he has finished his course and completed his race. Therefore, we rightly believe that he has now received from the just Judge the crown of justice. We know of the outstanding virtues

Translated by churchlatin.ai, a product of Boyne Archives

with which he shone throughout his life, of the many and constant labors he endured for the Church of God, of the long illness and the incredible pains he suffered for the love of Christ, of how willingly and sweetly he surrendered his most holy soul to God, and of how devoted he was to promoting and increasing the same glory. Furthermore, this distinguished priest was the author of a publication entitled "Acta S. Sedis," a concise and well-illustrated summary, and we announce to all those to whom this may concern that a group of priests has already been established, to whom the continuation of this publication has been entrusted. Therefore, in no way will its publication be interrupted henceforth, but it will continue and proceed in the same manner in which it has been carried out until now. The aforementioned priest has appointed two curators to administer this legacy: Canon Peter Crostarosa and Frederick Chiapperini, who will diligently strive to fully satisfy the testator's will. While he was alive, his one desire was that all the proceeds derived from the publication of his work should be used to establish an apostolic college, in which students would be educated for foreign missions. This work, most useful to the Christian Republic, has been declared by the Supreme Pontiff to be of the highest importance, and he has undertaken it at his own expense, increasing and promoting it. Therefore, we commend to the associates of this publication and to all those to whom this work is dear, that they do not cease to contribute their efforts. And thus, this undertaking will not only not languish, but will also improve day by day. We hope that this will come to pass, according to the will of the Most Excellent Pontiff, according to the will of that most blessed soul, and according to the will of all good men who strive for the Catholic Church. The curators and administrators for this undertaking are located in the village commonly called "Maschera d'oro," at number 7, third floor.

[*Latin ed. p. 629*]

FROM THE PROCEEDINGS, AS IF OF CONSISTORY, OF OUR MOST HOLY LORD POPE PIUS IX, BY DIVINE PROVIDENCE, A LETTER TO THE ARCHBISHOP OF LEOPOLI, TO THE BISHOPS OF HALICIA AND CAMENEC, OF THE SAME RITE, GRANTED BY THE APOSTOLIC SEE AND POPE PIUS IX.

VENERABLE BROTHERS, GREETINGS AND APOSTOLIC BENEDICTION.

From the very beginning of Our long pontificate, We have devoted Our care and efforts to promoting and fostering the spiritual well-being of the Eastern Churches, solemnly declaring, among other things, that the particular Catholic Liturgies, which Our Predecessors have always held in the highest esteem, must be religiously observed and preserved.

Translated by churchlatin.ai, a product of Boyne Archives

This matter is clearly demonstrated by what Clement VIII handed down in his Constitution *Magnus Dominus* in the year 1595, by Paul V in his Brief of December 10, 1615, and especially, omitting the rest, by Benedict XIV in his Encyclical Letters *Demandatam* in the year 1743, and *Allatae sunt* in the year 1755.

Since there exists the closest connection between discipline, especially liturgical discipline, and dogmatic doctrines, hence the Apostolic See, the infallible Teacher of the Faith and the most wise Guardian of Truth, scarcely perceives "any dangerous or improper rite in the Eastern Church." *Apostolic Letter of January 6, 1848.* The Eastern Churches, from their very beginning, in the supreme...

[*Latin ed. p. 630*]

Letter 630: "He was prevented," it is said. He was condemned, and his usage was disapproved.

1. Again, it is remembered that the care for preserving the ancient Liturgies was not an impediment to the acceptance of certain Eastern rites from other Churches, as Gregory XVI wrote to the Catholics of Armenia: "Your ancestors either, because they seemed more correct, were received, or, as a mark by which to distinguish them from heretics and schismatics, they adopted them at some time."

2. Therefore, as the same Supreme Pontiff states, "This rule must be observed entirely, by which it is established, without the consultation of the Apostolic See, that nothing is to be innovated in the rites of the sacred Liturgy, even under the pretext of restoring ceremonies, which seem to be more in conformity with the Liturgies approved by the same See, unless for very serious reasons and with the authority of the Apostolic See."

3. Furthermore, these legal principles, which were established with wise counsel for all Churches of the Eastern rite, also govern the liturgical discipline of the Ruthenians, whom the Roman Pontiffs have never ceased to favor with a singular affection and special benefits; and when it was seen that they were in danger, and their faith was threatened, the Apostolic See did not fail to raise its voice without delay, in order to avert so great an evil.

Solemnia: These are the words which Gregory XVI used.

4. Our Predecessor, for it is clear that the nation of the Ruthenians was in the most grievous condition, with as many as three hundred thousand of them being most wretchedly torn away from the bosom of the Cattolicae Church, and whom we lament today.

Benedictus XIV in his Letters Allatae, § 27, dated July 26, 1735.

Gregory XVI in his Letters Studium paternae benevolentiae, dated May 2, 1836.

Gregory XVI in his Letters Inter gravissimas, dated February 3, 1832.

Translated by churchlatin.ai, a product of Boyne Archives

Allocution given in the Consistory, dated November 22, 1839.

[*Latin ed. p. 631*]

The Ruthenian nation has not been without the aid of the same Apostolic See, when grave and prolonged controversies arose in the ecclesiastical Province of Leopoliensi, due to differences in discipline, and to mutual relations, which, whether concerning the rites among ecclesiastical men of the Latin and Greek rites, were stirred up there, not without detriment to Christian charity, which, through a convention or agreement proposed by the Bishops of both rites, and ratified on October 6, 1863, by a decree of the Holy Congregation for the Propagation of the Faith concerning Eastern rites, were happily resolved and put to an end. But the most grievous circumstances in which the same ecclesiastical Province, and especially the neighboring Diocese of Chelmensis, are presently involved, justly and deservedly demand all Our vigilance and concern anew. Very recently, it has been reported to Us that among these Greek-Ruthenian Catholics, a controversy concerning liturgical matters has been rashly stirred up, and that there exist certain individuals, although constituted in the clerical order, who, while studying new things, disregard those sacred ceremonies which have been commendably received in other places, and who also, in Zamoscenae, attempt to change and reform, at their own discretion, those things which have been solemnly approved by the Synodus, which the Apostolic See has solemnly confirmed. But what affects Us most is the state of affairs, and We have recently received with the deepest sorrow news of the afflicted Diocese of Chelmensis. Indeed, with the departure of its Bishop a few years ago, who was bound to the same Diocese by a spiritual bond, and to whom We are still attached, a certain pseudo-administrator, whom We have declared unworthy of the episcopal office, has usurped, disturbed, and, above all, with the greatest audacity, confounded and disrupted all matters concerning the liturgy. Benedict XIII, in his Brief *Apostolatus Officium*, dated July 19, 1724.

[*Latin ed. p. 632*]

Letter 632. We still have before our eyes the circular letters published on October 20, 1873, in which that unfortunate pseudo-administrator of divine worship dares to innovate in the sacred liturgy, and to introduce the liturgy of the Schismatics into the entirely Catholic Diocese of Cattolica; and he does not blush to bring forward certain Constitutions of the Apostolic See, fraudulently twisting their meanings with his own interpretations, in order to deceive the simple and uneducated, and to drive them more easily into schism. Furthermore, what is arranged in the aforementioned letters concerning the matter of the liturgy does not exist at all, and is entirely null and void; and We declare that these are entirely null and void by Our Apostolic Authority. For, in the first place, the aforementioned administra-

Translated by churchlatin.ai, a product of Boyne Archives

tor lacks any ecclesiastical jurisdiction whatsoever, which, indeed, neither a legitimate Bishop possesses during his absence, nor has the Apostolic See ever granted to him afterwards; and therefore, he has not entered the fold of the sheep through the door, but has climbed up another way, and it is clear to everyone that he is to be regarded as an intruder. In addition to this, the Canons of the Holy Church religiously command that the ancient, legitimately established rites of the East be preserved, since "Our predecessors, the Roman Pontiffs, having considered this matter more carefully, have decreed that such rites, in so far as they do not oppose the Catholic Faith, nor do they endanger souls, or cause ecclesiastical disturbance, should be observed with honor; and they have solemnly declared that no one may, without the consent of the Holy See, make any changes in the liturgy," as stated in the Apostolic Constitutions, which We have already mentioned sufficiently at the beginning. Nor is it of any importance that it is alleged that this is done to promote the good, namely, that such liturgical innovations are proposed as Pope Benedict XIV decreed in his Constitution *Etsi Pastoralis* published on May 26, 1742. * John, Chapter X, verse 1.

[*Latin ed. p. 633*]

633 An Eastern rite Mass shall be purged and restored to its original integrity. Since the liturgy of the Ruthenians can be nothing other than that which was either instituted by the holy Fathers of the Church, or sanctioned by the canons of Synods, or introduced by legitimate usage, always with the approval of the Apostolic See, either expressly or tacitly: and if any variations have occurred in this liturgy over time, they were certainly introduced with the knowledge of the Roman Pontiffs, and with the intention that such rites should be freed from any heretical or schismatic taint, and that Catholic dogmas should be expressed more clearly and accurately for the protection of the faith and the promotion of the good of souls. Therefore, under the deceptive guise of purifying and restoring rites, nothing else is intended than to lay snares for the faith of the Ruthenians of Chelm, to draw them away from the flock of the Catholic Church, and to deliver the most wretched men to heresy and schism. But the most bitter anxieties, in which we are everywhere pressed, are alleviated and refreshed by the most excellent and truly heroic spectacle, recently offered to God, Angels, and men, by the Ruthenian Diocese of Chelm, who, preferring to endure every unjust command of the pseudo-administrator, and even to bring their lives to a disastrous end, have chosen to suffer the extreme evil rather than to betray their ancestral faith and to abandon the Catholic rites which they and their ancestors have always observed, and which they declare they will perpetually preserve. We, for our part, do not cease to pray to God with all our prayers, that He may mercifully pour forth the light of His grace into the hearts of those who oppose the Chelm Diocese in every way, and that He may also grant powerful aid and spiritual guidance to those

Translated by churchlatin.ai, a product of Boyne Archives

miserable faithful who are utterly abandoned by all assistance, and that He may hasten the longed-for peace. After these things, you, Venerable Brothers, who have undertaken with such zeal and solicitude the care of the Ruthenians, we earnestly exhort you in the Lord, to continue to...

[*Latin ed. p. 634*]

The letter, number 634, having been thoroughly examined and approved by the Apostolic See, or having been presented to it and religiously defended, with any innovation being strictly prohibited, and with the careful observance of the Sacred Canons published on this matter, and especially with the observance of the decrees of the Council of Zamosc, being a duty for the Parish Priests, and for the Priests, sanctions through the most severe penalties being imposed if they fail to take care of this matter. For it concerns a most serious matter, namely, the salvation of souls, since illegitimate innovations bring the Catholic Faith and the holy union of the Ruthenians to the greatest peril. No effort should be spared, no labor should be avoided, to quell the disturbances caused by wicked men in this matter, and nothing should be left undone to completely suppress them: in these duties, which must be performed with courage and gentleness, we are confident that you, Venerable Brothers, will not fail, with the help of God's grace. And that you, Venerable Brothers, may prosper, we impart to you the Apostolic Blessing and commend you to the care of your flocks in the Lord. Given in Rome, near St. Peter, on the tenth day of May, in the year 1874, in the twenty-eighth year of Our Pontificate.

PIUS PP. IX.

[*Latin ed. p. 635*]

LETTERS 635. APOSTOLIC LETTER FROM HIS HOLINESS, POPE PIUS IX, SERVANT OF THE SERVANTS OF GOD, OUR FATHER AND LORD, CONCERNING THE CONFIRMATION, BY THE ARCHBISHOP OF MILAN, OF THE JUDGMENT REGARDING THE AUTHENTICITY OF THE BODIES OF SAINT AMBROSE, BISHOP AND DOCTOR OF THE CHURCH, AND OF THE MARTYRS GERVASIUS AND PROTASIUS.

PIUS, SERVANT OF THE SERVANTS OF GOD, FOR ETERNAL REMEMBRANCE.

§ I. He who, from beginning to end, acts with fortitude, and arranges all things with gentleness, is Almighty God, the Immaculate Spouse acquired by the Precious Blood of the Only Begotten Son of the Holy Church, and firmly established upon the rock of the Apostolic Confession, thus constantly establishing a bulwark and defense against the ever-increasing wickedness of the world and the powers of darkness, so that those who,

Translated by churchlatin.ai, a product of Boyne Archives

even while living in the flesh, had cultivated it through their passion and examples, may, in their still most glorious adornment, defend and protect it with heavenly patronage, and, having illuminated it with their doctrine, may forever be received into the homeland with triumphant trophies. This most excellent counsel of divine goodness became most evident when, amidst the most violent storms that arose against the Christian people and the entire Catholic Church, more bodies of Saints, which had long been hidden, were brought to light again, so that, by this very fact, the spirits of the afflicted might be raised to follow their footsteps and implore their aid, and to foretell the imminent triumph over the enemy of the human race. This has been evident from events in past times, as the accounts of the discovery of the bodies of many Saints clearly show; and likewise, in this our age, in which wickedness abounds and the charity of many has grown cold, we confidently believe that, upon the discovery of the sacred relics of Ambrose of Milan, Bishop and Doctor of the Church, and of the Martyrs Gervasius and Prota-sius, it will certainly be...

[*Latin ed. p. 636*]

Letter 636, Section 2. And these are the valiant champions of the Faith, who, under Nero, during the first persecution of the Christians by the Gentiles, having poured out their glorious blood for Christ, attained the palm of martyrdom, whose bodies, after a long time, were in the Basilica of the Saints; Felicity and Nabor, who had been buried in Milan, were discovered by Saint Ambrose, by God's command, and were transferred to the Basilica which He had built, and there they were honorably buried. When, in the year 397 after the birth of Christ, Ambrose himself exchanged this mortal life for eternal life, he was buried near the bodies of these Saints, in the crypt of the aforementioned Basilica, as he had arranged in his lifetime. This tomb, however, God made glorious, both by the frequent gatherings of the people, and by the many miracles wrought through the intercession of the Saints. And although the city of Milan has been subjected to barbarian invasions, yet the sacred relics and the Basilica itself have always remained inviolate in the very place where they were first buried. Moved by all these things, Angilbert, the Archbishop of Milan, in the year 835 of the restoration of the Church, removed the bodies of Ambrose and his Saintly brothers from their original burial place and transferred them to a magnificent porphyry chest, over which he built a most precious and wondrous altar. From that time on, in the Ambrosian Basilica, as if the place of their repose had been revealed, these sacred relics have never ceased to be venerated by the devotion of the whole world, but it has never been granted to anyone to see them openly, and to be strengthened by that sight for the good fight of faith.

Section 3. However, God, who adapts all things to His divine purpose, knew the opportune medicine for this time, and had reserved this event

Translated by churchlatin.ai, a product of Boyne Archives

for our age, so that the illustrious teachings of Ambrose, and the examples of the Martyrs, might be most necessary to enlighten the minds of the faithful with the spirit of understanding and fortitude. Therefore, in the year 1864, when work had begun to restore the Ambrosian Basilica from its foundations, and after the floor had been dug up, and the old brickwork, which surrounded the crypt of the Confession, had been removed, first two tombs were discovered, a porphyry chest which stood across from them.

[*Latin ed. p. 637*]

These tombs having been opened, certain fragments of Sacred Bodies were discovered, along with coins, indicating the epoch preceding their deposition, dating back to the fourth century, and their subsequent discovery was made in the sixth century by Saint Lawrence, the Archbishop of Milan. We received the news with great joy, and concerning this matter, which weighs heavily on the solicitude of all the Churches, we sent special letters from the Sacred Congregation of Rites, dated in Rome on the eighteenth day of the month of February of the aforementioned year, to our beloved Brother Bishop Famaugustanus, who, although not lacking an Archbishop, still performed the duties of Vicar Capitular and Ordinary of the See of Milan, signifying our will that all the actions undertaken in the examination of the Sacred Bodies should conform to the instructions contained in the document issued by our beloved son, Peter Minetti, Promoter of the Sacred Faith, which had been appropriately prepared; and furthermore, that in the re-deposition and placement of these same Sacred Relics, it should be declared that they are to be kept under the immediate protection of the Holy See, so that it shall not be permissible to open the urn or distribute the Relics in any way, unless with the appropriate permission obtained from Us or Our Successors.

§ 4. However, since nothing further had been done concerning the Sacred Bodies up to the year 1871, on the eighth day of August, in the presence of our beloved Brother Aloysius, the Archbishop of Milan, and his court, and with a large gathering of people from all social classes, that porphyry chest was finally discovered, and within it, three Sacred Bodies were found completely submerged in water. Then, on the eleventh day of the same month and year, they were brought forth, restored to their proper form by expert anatomists, and individual fragments of bones from each body were compared by experts, who had extracted them from the tombs, in order to reconstruct them. Not only did they obtain a certain and definitive proof of the identity of the relics, but also, from particular characteristics, which the venerable tradition of Ambrose and the Holy Martyrs had attributed to them, they were able to distinguish that body from the others. Finally,

Translated by churchlatin.ai, a product of Boyne Archives

when all the actions had been carried out with the utmost diligence, and...

[*Latin ed. p. 638*]

Letter 638. It seemed that nothing further could be added to ensure the certainty that, in these matters, the support of these men warranted, the aforementioned Archbishop solemnly declared that our most learned Archbishop of Milan, on the 23rd of April of the current year, had decreed: "That three bodies, in our presence, found in a porphyry chest on the 8th of August, 1771, beneath the High Altar of the Basilica of Saint Ambrose in this city, are truly and properly those of Saints Ambrose, Gervasius, and Prothasius; that is, the one of smaller stature is that of Saint Ambrose, Bishop of Milan, Doctor of the Church, while the other two, of taller stature and of flourishing age, are those of the Saints Gervasius and Prothasius, placed in the tomb by Ambrose himself."

§ 5. Having thus completed all the aforementioned procedures with due diligence, the same Archbishop of Milan took care to transmit to Us the acts of the Judicial Inquisition, instituted repeatedly and for the third time since 1864, and to these suppliant letters, he added most illustrious pronouncements of Ambrose concerning the Primacy of the Chair of Peter, and its prerogative of infallibility, which he humbly requested that we might deem worthy to add strength to the authority of Our Apostolic See by the judgments rendered by him. We, therefore, receiving such petitions with benevolence, although we considered that there was no doubt about the truth of what had been declared, nevertheless, because of the unjust clamor of those who would obstruct the Catholic Church, not only concerning the veneration of the sacred relics, which were once the living members of Christ, and the temples of the Holy Spirit, raised again and glorified by Him, but also concerning the false relics of the Saints, which they falsely claimed were offered to the veneration of the faithful, we deemed it necessary to employ that diligence which the Apostolic See is accustomed to use in matters of such importance. Wherefore, we entrusted the particular examination of the entire matter to certain of Our Brothers, Cardinals, who are entrusted with the safeguarding of the sacred rites, and to a group of Prelates of the same Congregation, chosen by Us.

§ 6. This particular Congregation, having carefully considered the established and constant tradition, and the most abundant authentic documents,

[*Latin ed. p. 639*]

The documents attest that, through Apostolic acts dating back to the year 639, as well as imperial and royal decrees, Episcopal visitations, the most ancient calendars and martyrologies, coins found in tombs, and finally, the very structure of the urn and the surrounding brickwork, there can be no doubt concerning the identity of the sacred remains. Further evidence was accumulated through careful analyses conducted by expert anatomists of

Translated by churchlatin.ai, a product of Boyne Archives

bones and other remains found in the ark and tombs. Therefore, considering all of these elements, especially when taken together, this particular Congregation judged that it had established proof that was scarcely susceptible to doubt in these matters. On July 24th of the current year, after deliberation, the assembled members wrote as follows: "If it pleases Your Holiness, the sentence of the Archbishop of Milan is to be confirmed; and the body of Saint Ambrose, as well as the bodies of the Saints Martyrs Protasus and Gervasius, with which the remains of Saint Doctor [Ambrose] have hitherto been joined, according to his will, shall remain united forever, under the immediate protection of the Holy See, so that no one may dare to bring forth or distribute any part of them, under pain of excommunication, declared by the Supreme Pontiff; and it is Our judgment that the same Holiness should expedite the issuance of Apostolic Letters under seal concerning this confirmation."

These matters, which were accurately reported to Us by the Most Reverend Dominic Bartolini, Our beloved son and Secretary of the same Holy Congregation, have filled Us with immense gratitude for the divine goodness that has deigned to comfort and strengthen Us in these great anxieties and perils, through the discovery of the bodies of the Blessed Martyrs Gervasius and Protasus, and especially through the judgment concerning the body of so great and renowned a Doctor of the Church: "That ship is never wrecked in which prudence sails; perfidy is absent; faith breathes." For how could that which is under the guidance of Him in whom the foundation of the Church rests be disturbed? Therefore, We gladly approved the judgment of the Congregation concerning the aforementioned remains, as is evident from the decree issued on the same day.

[*Latin ed. p. 640*]

640 Letters § 8. Wishing that devotion to Saint Ambrose, the Doctor, may be inflamed daily by a more solemn testimony of Apostolic authority and by the new patronage of Our confirmation, and that those who adhere to and maintain the judgment of Our predecessors, especially concerning the identity of the bodies, as well as the most holy relics of Saint Benedict XIII, Bishop of Piacenza, and of Saint Augustine, Bishop of Hippo Diarrhytus and Doctor of the Church, whom Saint Ambrose himself brought to Christ, which was solemnly approved by the Bishop of Pavia through Apostolic Letters bearing the seal, dated December 10th of the year 1728; We also, with certain knowledge and moreover by Our own initiative, fully approve and confirm the judgment of the Archbishop of Milan regarding the identity of the sacred bodies of Saint Ambrose, Bishop and Doctor of the Church, and of the holy martyrs Gervasius and Protasius, and We decree that this shall always be and remain firm and valid for all time. Furthermore, We command that these sacred bodies remain united, as they have been until now, and We receive them under the immediate protection of the

Translated by churchlatin.ai, a product of Boyne Archives

Apostolic See; so that, without the permission of the same See, it shall not be lawful for anyone, after the solemn re-entombment has been completed, to open them again, or to remove, transport, or take away any part of this most sacred deposit, under pain of excommunication, pronounced by sentence, from which absolution We reserve entirely to Ourselves and to Our Successors. § 9. In order that so auspicious an event may be celebrated with greater devotion and grace by the faithful, and that Saint Ambrose and the illustrious martyrs may be a more powerful intercession before God for the Church and for the entire Christian Republic, and that they may be honored with ever greater devotion; We grant to all and each Christian faithful who, truly contrite, on the day of the solemn re-entombment of these sacred bodies, or on another day indicated by the local Ordinaries, confess and receive the Holy Body of Christ in the Metropolitan or Ambrosian Basilica of Milan, or in any other church bearing the name of Ambrose,

[*Latin ed. p. 641*]

Let these Letters be dedicated to God, 1 with the exaltation of the Saints, 641, and for the urgent needs of the Church, imploring the intercession of Saint Ambrose and the Martyrs Gervasius and Protasius, that pious prayers may be offered to God. We, in the Lord, benignly grant a plenary indulgence and remission of all sins, which may be applied, even to the souls detained in the flames of purgatory, as a form of suffrage. § 10. Therefore, we entrust this to each Venerable Brother and command all our Patriarchs, Archbishops, Bishops, and other prelates of the Church, that they diligently see to it that these Letters are solemnly published in their respective provinces, cities, and places, in the manner that they deem most fitting. Furthermore, these Letters, and everything contained within them, shall never, at any time, be noted, impugned, or declared invalid or ineffective due to any defect, or by any other reason, but shall always and perpetually remain valid and efficacious, and shall have their full effect; and we desire that they be considered and held to be of full force by all, of whatever rank and dignity. We command that, even with copies of these present documents, printed and signed by the hand of a public Notary, and sealed with the seal of a person constituted in ecclesiastical dignity, the same full faith be given to them, as would be given to the original documents if they were presented or shown. Therefore, it is forbidden to any person whatsoever to infringe upon this page of our approval, ratification, confirmation, reception, reservation, concession, decree, mandate, relaxation, commission, and will, or to dare to act in opposition to it with reckless audacity. If anyone should presume to attempt this against the Almighty God and the Blessed Saints, let them know that they will incur the wrath of the Apostles Peter and Paul. 1 In places where there is no church, or at least no altar dedicated to the aforementioned Saint, the same visitation must be performed in the church designated by the Diocesan Ordinary (from the

Translated by churchlatin.ai, a product of Boyne Archives

Sacred Congregation of Rites). Acts, volume VII, page 82, paragraph 41.

[*Latin ed. p. 642*]

Decree 642. Given at Rome, near St. Peter's, in the year One Thousand Eight Hundred and Seventy-three, on the seventh day before the Ides of December. In the twenty-eighth year of Our Pontificate.

By A. Cardinal Vannicelli, Pro-Datary.

Cardinal Asquinius.

Seen by the Secretary of the Curia, I. De Aquila, and the Vice-Secretaries, I. Cugnonius.

Place: At the Office of Lead, in the Registry of Briefs.

From the Eighth Congregation of the Council of Trent, of Parochial Jurisdiction, on the twenty-sixth day of July, 1873.

Summary of the case.

There exists in the city [N.], a boarding school for girls, to which a church is attached.

This building has, from ancient times, had an entrance in a certain alley which is located within the boundaries of the Parish of St. Mary. Therefore, the Parish Priest of St. Mary has, from time immemorial, exercised full jurisdiction both in the church and in the entire boarding school, each year.

However, in the year 1853, with the authorization of the civil government, a new and larger entrance was opened on the opposite side, facing the street, and this entrance falls under the jurisdiction of the Parish Priest of St. Catherine. A question has thus arisen in the Archdiocesan Curia regarding the extent of the parochial jurisdiction over the aforementioned boarding school, which lies within the boundaries of both Parishes. This question was discussed on the day...

[*Latin ed. p. 643*]

On March 13, 1855, the parochial jurisdiction was settled by the following decree: "By mutual agreement, 643 [individuals] were resolved [regarding] 'Concerning... the aforementioned Parishes,' and 'it was decreed that the aforementioned Parish Priest of Saint Mary should maintain his prior jurisdiction in the aforementioned College, regarding all matters pertaining to his parochial rights, and that the Parish Priest of Saint Catherine should enter the portion of the new [building] constructed within his territory during the Paschal season, so that he may impart the blessing, and that he should not exceed the boundaries of the same, as is customary.' The controversy again began to be agitated in the year 1859, but since that old door was subsequently closed and converted to another use, namely, a storage room, the matter did not proceed further. However, by a decree of the Archdiocesan Curia, it was established that the Parish Priest of Saint Catherine should record the deaths of girls and attest to the reception of

Translated by churchlatin.ai, a product of Boyne Archives

the sacraments, while the Parish Priest of Saint Mary, in the Church of the Conservatorium, should perform the funeral rites, should the deceased be found within his jurisdiction. When, in the year 1870, the door in the village was restored to its former condition and use, and, at the urging of the Parish Priest of Saint Mary, the decree of March 13, 1855, mentioned above, was confirmed by the Archdiocesan Curia on March 29, 1870. As soon as this became known to the Parish Priest of Saint Catherine, he immediately petitioned the aforementioned Curia for a formal judgment regarding this controversy, which was settled by a final sentence issued on August 4, 1871, in which it was decreed: 'The Parish Priest of Saint Mary of Scala shall remain in possession of his prior jurisdiction in the aforementioned College, regarding all his duties and parochial rights, entering [the College] either through the Church or through the old door of the College itself, saving to the Parish Priest of Saint Catherine the right to bless the [new] building, according to the decree issued on March 13, 1855.' The Parish Priest of Saint Catherine received this sentence with great displeasure; hence, without delay, he filed an appeal, using the abbreviation H.S.C., in order to defend his rights and to conceal [his true feelings].

[*Latin ed. p. 644*]

Jurisdiction 644 pertaining to parishes should be maintained. Having received this document, a letter was written to the Archbishop for information and a decision, and the person in charge sent a certified copy of the proceedings on December 21, 1872. With this response received, the cause proposed is presented under the following formula. A concise summary. FOR THE PAROCHIAL VICAR OF SAINT CATHERINE. The elected patron, considering the history of the facts presented, demonstrates that the larger part of the territory currently within the boundaries of the Parish of Saint Catherine was formerly under the jurisdiction of the conservators. This is diligently proven by a disciplinary statute enacted by royal authority in the year 1856, through documentation and the testimony of witnesses. Given this, the expert witness strongly argued that the parochial jurisdiction in its entirety belongs to the Parochial Vicar of Saint Catherine. Indeed, the Council of Trent decrees in Session 24, chapter 13, concerning reforms: "In those cities and places where parochial churches do not have defined boundaries, and their pastors do not have a specific people to govern, but administer the sacraments indiscriminately: the Holy Synod commands the bishops, for the safer salvation of the souls entrusted to them, that they assign a distinct people to certain and proper parishes, and that each be assigned a permanent and particular pastor who may know them and from whom the sacraments may be lawfully received..." With these points established, the question arises: what rule should be established to determine the proper pastor in the case where a house is located on the boundary between two parishes? And a rule is established in this regard: "That the

Translated by churchlatin.ai, a product of Boyne Archives

pastor is that of the parish where the main entrance of the house is located." This principle is further confirmed by the authority of Doctors, namely Aloysius Ricci, *Practices of the Church*, resolution 310, numbers 1 and 4; Barbosa, *On the Office and Power of the Bishop*, page 2, appendix 32, number 71; Reffeinstuel, *Concerning the Title of Parishes*, number 20; Giraldi, in additions to *Institutes of Canon Law*; Maschat, *Summary of Decretals*, book 3, title 28, concerning burials, chapter with Cardinal Pignatelli, *Canonical Consultations*, volume 8, consultation 3, number 7.

[*Latin ed. p. 645*]

The jurisdiction of a parish, according to the consensus of 645 doctors, is in accordance with common human understanding and the laws of the Romans, and is therefore accepted unanimously by all civil nations. This consensus of doctors is confirmed by examples of similar cases. It states that a similar question was debated by the Reverend Vicar General in the year 1694, "in favor" of "St. Mary of the Martyrs of the City" against the Chapter of St. Eustachius, relating to the most illustrious family of the Marquis of Virginia Crescenzi, whose main entrance is located within the parish of the aforementioned St. Mary. Furthermore, it was judged in the same way by the Congregation of Bishops in 1870, concerning Associations and Regular Canons, and the emoluments of funerals, where it is stated: "The fourth funeral is to be given between the same Parish Priest of the City and another from the parishes of Veliterna, 'within the boundaries of whose parish is located the main entrance of the house.'" Finally, the Archdiocesan Curia rejects the aforementioned judgment, as it is contrary to law and practice, and is based on a mistake. And to demonstrate this, it refutes individually all that is presented in the aforementioned judgment. First of all, it argues that the boundaries of parishes are immutable, whereas, according to the Council of Trent, Cap. 4, concerning Reforms, the Bishop has the power to establish new parishes due to distance or the inconvenience of the parishioners. It also supports this with the argument that each person can change their residence at will, according to Reiffenstuel, on Parishes, no. 21, and therefore, the act of closing the old gate is an act of free choice, just as an act of election is. Furthermore, it points out that the jurisdiction was transferred from one parish to another from the year 1862, when the parish priest transferred his residence to another parish, until the year [omitted]. Catherine argued that she had truly possessed the property since 1870, because the Curia consented to it. However, she affirms that the theory of the main entrance applies to any house, even one that is anciently built, as she claims to have learned from Doctors who make no distinction, and from the decision of the Most Holy Congregation of Bishops and Regular Canons. Therefore, she concludes that the judgment of the Archdiocesan

Translated by churchlatin.ai, a product of Boyne Archives

Curia is completely different.

[*Latin ed. p. 646*]

The parochial jurisdiction is unjust because it divides the jurisdiction between two parishes, the parishes of Saint Mary and Saint Catherine, and, as it is contrary to law and practice, it ought to be abolished. Regarding the alleged factual error, the parish priest of Saint Mary contends that the jurisdiction of the parish priest of Saint Mary, as evidenced by documents from the archives of the Archdiocesan Curia, specifically from the register of parishes dated 1598, clearly shows that the girls' college was not within the boundaries of the parish of Saint Mary. This is further supported by the historical testimony of Caesar D'Eugenio, and by the act of the Archdiocesan Curia which, in 1792, assigned the aforementioned college to the jurisdiction of the parish priest of Saint Catherine, who exercised this jurisdiction until the year 1805, as is evident from the acts of jurisdiction carried out by him. He regained this jurisdiction again in 1862, until the year 1870. Therefore, the parish priest of Saint Catherine concludes that the parochial jurisdiction over the entire college should belong to him, since the main entrance is located within the boundaries of his parish.

THE RIGHTS OF THE PARISH PRIEST OF SAINT MARY. – It is established by the Councils, by all, that the territory of a parish is stable and perpetual, so that the parish priest of Saint Mary must maintain a certain jurisdiction, so that it cannot be taken away or changed by prescription, and that the parochial jurisdiction must be such that it cannot be conceived without a territory. Thus, Maschat, Lib. 3, title 2, canon 2; Lib. 3, title 2, On Parishes, n. 2; Pignattelli, vol. 3, n. 21, citing Trident, Ref. Sess. 21; Reiffenstuel, Tom. IV, Cons. 26, n. 1. From this, it follows that the Council of Trent, Session 21, Chapter 4, on Reforms, granted to the Bishops the faculty of changing the boundaries of parishes, but only in these cases, namely, "when, because of the distance of places, or the difficulty, the parishioners cannot easily have access to the sacraments and to the hearing of divine services," or when the parish churches do not have a distinct territory, Session 24, Chapter 13, end of Reforms. From this, he concludes that, apart from the cases mentioned, the Bishop cannot change the territory of a parish.

[*Latin ed. p. 647*]

According to the pronouncements of the learned Pignattelli, volume 4, section 230, number 6, the jurisdiction cannot be altered, as tradition dictates. With these principles of law established, the Orator proceeds to refute the arguments of the opposing side. He states that the main argument of the adversary rests on the assertion that a new entrance, which is said to be the principal and most frequently used entrance, has been opened within the boundaries of the parish of Saint Catherine in Fismes. However,

Translated by churchlatin.ai, a product of Boyne Archives

he contends that this argument is to be refuted based on the principles presented, because this action originates from a secular authority, which is entirely illegitimate, in altering the parochial jurisdiction; and he considers it deplorable that the opposing side would insist on this. Those interpreters and canonists who are cited on the opposing side, and who teach that if a house has two entrances in two parishes, it belongs to the parish in which the principal and most frequented entrance is located, add that in this case, nothing prevents this. However, they themselves speak of a house that is entirely and newly constructed; otherwise, they would fall into a shameful contradiction, since they state that the boundaries of parishes "cannot be abolished or altered by prescription." (Maschat, Book 3, volume 2, number 1). Therefore, he believes that when they speak of the principal entrance, they are not speaking of abolishing an established law, but of establishing or assigning jurisdiction over a new building. For example, when religious institutions are suppressed, their buildings fall under the jurisdiction of the parish in which they have the principal and most frequented entrance. He concludes that an absurdity arises from the opinion of the adversary. Indeed, if this were admitted, anyone could, at their own whim, alter the jurisdiction of a parish, and escape it, because if someone had a house that bordered the boundaries of four parishes, in order to escape the jurisdiction of their own parish, they would need to do nothing more than close the entrance to Altbunzlau and open a new entrance on the other side. And everyone can easily perceive how absurd this is. Finally, he points out that the principal entrance is that which,

[*Latin ed. p. 648*]

The parochial jurisdiction, from its original and architectural perspective, corresponds to the building; which, indeed, is the case only with an ancient entrance. It is also more frequented and convenient, as indeed all testify. Therefore, the arguments of the opposing party tend to dissipate into thin air. After these points, the Orator proceeds to extend the scope of the Curia's judgment, which he seeks to refute, arguing that it restricts and divides the jurisdiction of his client; for the parish should be entrusted to only one Parish Priest, namely, the Parish Priest, according to Cap. i, n. 43. This judgment, which concerns the Parish Priest of S. Barbosa, allows Catherine to administer the blessing only within the new chapel, and not to extend it beyond the boundaries of the same. Furthermore, he adds that such a judgment is equivalent to a true dismemberment, as it severs a portion of the jurisdiction from the ancient Parish Priest, which exceeds the powers of the Bishop. Indeed, it contains a contradiction, since in the prior part of the judgment, it was stipulated that the Parish Priest of S. Mariae should be preserved. Finally, it is conceived of and affirmed that the decree concerning Scala does not pertain to the jurisdiction of Catherine, because a new entrance was opened into the territory of the opposing party, while in

Translated by churchlatin.ai, a product of Boyne Archives

the same judgment, it is asserted that the entire chapel is placed under the jurisdiction of another Parish Priest. From all of these points, he concludes that the jurisdiction over the chapel in question belongs entirely to the Parish Priest of S. Mariae. With these points presented on both sides, the question was: Is the entire parochial jurisdiction over the chapel in question to belong to whom?

RESOLUTION. - The Sacred Congregation, having considered the matter, decided to respond affirmatively on July 26, 1873, in favor of the Parish Priest of S. Mariae. However, when the Parish Priest of S. Catherine brought the matter again before the Sacred Congregation on February 27, 1874.

[*Latin ed. p. 649*]

The parochial jurisdiction, 649, but almost the same reasons, both of law and of fact, which we have explained above, concerning the question of whether one should adhere to or depart from decisions in a case, the answer was: "In the decisions, and even more so." THEREFORE, THE FOLLOWING MAY BE GATHERED: I. The parochial territory must be certain, stable, and perpetual, so that it cannot be taken away or altered by prescription; hence, the parochial jurisdiction must also be of this nature, which cannot exist without a territory. II. It is permissible for bishops to change the boundaries of parishes, only in those cases in which, because of the distance of the places, or the difficulty of the parishioners in accessing the parochial church without great inconvenience to receive the sacraments and hear the divine services, or when the parochial churches do not have a distinct territory. III. If any house has two doors on its sides, which lie within the boundaries of two parishes, it is subject to the jurisdiction of that parish in whose boundaries the main entrance is located. IV. The main entrance is considered to be that which is in accordance with the original and architectural appearance of the building, and which is more frequently used. V. If any house touches the boundaries of different parishes on its sides, it does not escape the parochial jurisdiction to which it belongs, even if a new door is opened on the other side.

[*Latin ed. p. 650*]

Chaplaincies 650. CHAPLAINCIES. July 26, 1873. Summary of facts. The priest Vincent B., from the diocese of N., upon his death, ordered that six canonical prebends be established in the parish church of his homeland, entirely from the assets of his estate. He wished that among the canons, the Archpriest of the parish at the time should be included, and he imposed the obligation on each canon to sing Mass daily in turn. Regarding the right of patronage, both active and passive, he stipulated that the nomination for the six canonical prebends should, in the first instance, be directed to the Archpriest of the parish at the time, but with the condition that those descended from the families of M. and P., if found suitable, should be

Translated by churchlatin.ai, a product of Boyne Archives

preferred to others. Subsequently, he granted the same right of nomination to the canons, with the same condition regarding precedence. Furthermore, since the pious testator clearly foresaw that his will would not be immediately effective after his death, because the income left by him would not be sufficient to provide the sum due to each canon, he decreed that the inheritance should remain under administration for as long as, with the addition of annual income, there would be enough to endow the six prebends, and in the meantime, so that his soul would not be deprived of prayers, he ordered that immediately after his death, two prebends should be established, to which he himself nominated two priests. With these arrangements in place, the testator died in the year 1831. In the year 1834, however, when the Bishop, during an actual Visitation, discovered that the testator's estate had fallen into such a state, partly due to debts and partly due to imprudent administration, that it would take many years to accumulate enough for the erection of a collegiate church, and on the other hand,

[*Latin ed. p. 651*]

The chapter concerning the chaplaincies (651) made it clear that few priests were willing to accept canonical positions, so he presented a humble petition to the Most Holy [Pope], requesting that he grant him the opportunity to reduce the number of canonries from six to only three chaplaincies, while imposing upon the chaplains the duty of assisting the parish priest in the care of souls, and of performing all those things that would be more beneficial to the people.

The Bishop, having considered the matter, and on May 3, 1834, the following rescript was issued: "Most Holy Lord, having heard the report of the Secretary of the Sacred Congregation [of the Council], and considering the particular circumstances present in this matter, We, approving the prayers of the aforementioned Bishop, grant him the faculty requested concerning the alteration of the number of endowed benefices, and to reduce them from six to three, as We have benevolently decreed to the aforementioned Bishop and Apostolic Visitator." Thus, the pious testator's goods, divided into three parts, were entrusted to three priests, but without any canonical erection of the benefices, nor with the preliminary regular collation according to the sacred canons.

However, this canonical erection was completed in the year 1838 by another Bishop, who, at the same time, imposed upon the three chaplains the duty of assisting the parish priest, both in the administration of the sacraments and in the care of the sick, and constituted them as true coparishioners, and declared the right of patronage, by virtue of the aforementioned papal rescript, to be extinguished.

Against these dispositions, an appeal was made to the Holy Sacred Congregation. The archpriest argued that the pious testator's will should be

Translated by churchlatin.ai, a product of Boyne Archives

carried out in all things, and therefore the papal rescript should be declared invalid.

When one of the aforementioned chaplains became vacant, two of the descendants of those families whom the testator had named requested the institution from this same Sacred Congregation, as if it were a free collation, against the [candidate] from Clericum, who was equally deserving.

Consequently, a dispute arose, and a decree was issued by the Sacred Congregation, ordering that the matter be placed in a file, and the case was presented under the doubt formulas written at the bottom.

[*Latin ed. p. 652*]

652. A Synopsis of the Dispute Concerning Benefices. Since the subject of this controversy is multifaceted, we shall address each point separately on May 3, 1834. REGARDING THE VALIDITY of the Pontifical decree, the following arguments were presented. The decree states: "From the teachings of the Council of Trent, Session XXII, Chapter VI, concerning Reform, it is necessary to proceed with a just and necessary cause in order to alter testamentary dispositions; and before such alterations are put into effect, Bishops must, outside of judicial proceedings, ascertain the truth of the matter." The words of the Council are as follows: "In alterations of testamentary dispositions, a necessary cause must be present, which can only be ascertained by the Bishop, as also by his delegates, in a summary and extrajudicial manner, to ensure that nothing has been stated in the will, either explicitly or implicitly, that is false; before the aforementioned alterations are put into effect." In truth, when it comes to altering testamentary dispositions, the principle held by the Church is that which the same Council of Trent expounded in Session XXV, concerning Reform, Chapter IX: "It is not right to alter the wishes of the faithful in their institutions," for it is necessary to observe the agreements and laws of the foundations according to natural law. Furthermore, concerning the alteration of the will of a pious testator, and the reduction of the number of benefices, a just and necessary cause is not present, since the principal cause presented by the advocate to obtain the reduction appears to be lacking. Indeed, the very Council of Trent, Session XXIV, Chapter XV, concerning Reform, states that the inadequacy of benefices, even those already existing, is a just and legitimate reason for reducing their number. And the Council further states: "In cathedral and collegiate churches, where the benefices are frequent, and therefore meager, along with the distribution..."

[*Latin ed. p. 653*]

"Concerning the endowments of the chaplaincies, which, with their daily expenses, are insufficient to maintain the canonicals in a manner befitting their rank, and to support 653 persons with due dignity, it is permitted... to reduce them to a smaller number." However, it appears

Translated by churchlatin.ai, a product of Boyne Archives

to the Most Holy Prince that something false has been insinuated in the petition presented to the Bishop, or that something true has been omitted, which, had it been known, would have led to the denial of the requested grace.

The petitioner argues that, since the damages to which the testator's property was subjected have been explained, and from which the stability of the revenues resulted, and these damages are not denied by the Archpriest himself, the endowments of the chaplaincies, from which the aforementioned Rescript originates, are not subject to any hidden detriment. Furthermore, it has been demonstrated that the alleged hidden detriment concerns the Parish Church, which received assistance from three auxiliary priests, and the account of the deceased Bishop fully corroborates this. Moreover, it was not omitted that six of the canonical benefices are subject to patronage, since the petition was accompanied by a copy of the will, which refers to both active and passive patronage. However, whether a hidden detriment exists, it must be demonstrated, either by proving an act of deceit, or by demonstrating the truth or falsehood of the allegations.

Rota in Mace- raten. Executionis litterarum apostolicarum, 17 febbraio 1792, coram Soderini, § 2; in Romana, Emphiteusis super aperitio?ie oris, 8 giugno 1801, § 5, coram Gardoqui; in Verulana, Pensionis, 14 giugno 1816, coram Serlupi, § 5.

AGAINST THE VALIDITY OF THE RESCRIPT. It has been noted that such a Rescript, despite everything, may give rise to suspicion of hidden detriment or deceit due to the lack of investigation into the consent of the Patrons. Indeed, the Holy Congregation solemnly urges Bishops to inquire into the consent of the Patrons, whether lay or ecclesiastical, even when it concerns a benefice subject to patronage, which is to be erected in the Penitentiary or Theological order. *Lucidi de VV. SS. LL., Tom. i, pag. 82, n. 84.* Therefore, a fortiori, the consent of the Patrons seems to be required when it is a matter of reducing the number of benefices, by which a more serious injury is inflicted upon the patronage rights. Furthermore, the investigation...

[*Latin ed. p. 654*]

Regarding the matter of the chaplaincy, it is not to be doubted that the decree concerning the nullity of the endowment, which is detrimental to the public good, is invalid. Thus, according to law, article 5 of the Code states: "If something is contrary to the law or the public good, the Sacred Rota, in its decision 217, number 26, page [illegible], volume I (there), declared: 'It is not without reason that the Emperors have decreed that if a concession is obtained contrary to the law and the public good, it should be considered as if it had not been granted.'"

Indeed, it is clear to anyone that the decree in question is detrimental to the public good, since through it, the erection of the collegiate church has

Translated by churchlatin.ai, a product of Boyne Archives

been established on lands that formerly adorned the city or town, adding beauty and dignity to it, and increasing the divine worship.

CONCERNING THE ABRIDGMENT OF THE RIGHT OF PATRONAGE.

However, with regard to the question of the right of patronage, for the sake of clarity, it is noted that in the aforementioned decree, no mention was made of abolishing or altering it, but only of a discussion regarding the reduction of the number of benefices. Indeed, the Bishop did not even request that the right of patronage, whether active or passive, be abolished. Therefore, the entire question seems to rest on whether the right of patronage has implicitly been abolished, to the extent that, with the changed will of the testator concerning the erection of the collegiate church, and with the establishment of three chaplains with the obligation of assisting the parish priest, the right of patronage, as if incompatible with this new state of affairs, has ceased to exist.

Given these premises, it is observed that, although the right of patronage pertains to the patrons, the Church, as the institution of this right, is entirely subject to it. Therefore, all canonists unanimously list, among the ways in which the right of patronage is lost or abolished, the suppression by the Pope. Schmalzgrueber, title on the right of patronage, number 261.

The Pontifical decree seems to have implicitly brought an end to the right of patronage, both active and passive, in this case, since the right of patronage ceases when the foundation upon which it is based ceases to exist, just as if the Church were destroyed. For, of a non-existent thing, there are no qualities. Chapter 6, to be dissolved, 13, concerning the marriage of a minor, § condemned, concerning the matter already judged. Furthermore, if the Church did not consent to the collegiate church, to which the right of patronage was attached by the will of a pious testator...

[*Latin ed. p. 655*]

The chaplaincy, number 655, never existed, nor does it exist now, due to a Pontifical Rescript. Furthermore, the right of patronage also ceased for that reason, because of that well-known principle: the accessory follows the principal. Moreover, the testator, in his will, designated the Archpriest to be nominated for the first time, so that he might preside over the college of canons as its head. Afterwards, however, the college of canons, united collegially, was legally obligated to nominate in each vacancy: therefore, since there was no such college of canons, it is clearly evident that the cause of patronage ceased, both for the Archpriest and for the canons. Indeed, all canonists agree that patronage ceases when the cause for which someone was a patron is extinguished. Lambertini, *De iure patronato*, book 3, question 6, article 1; Barbosa, book 3, *Iuris Ecclesiastici universi*,

Translated by churchlatin.ai, a product of Boyne Archives

chapter 12, number 234, and others, throughout. Furthermore, it does not appear how the right of nomination could have been limited to the first time only, and how a lasting right was never left; it was not possible. For the Archpriest's right, indeed, was a temporary right for the college of canons, while the right of the college of canons was a stable right. But it seems that the college could transmit this right to someone else, along with its inheritance, which it never had. Do not say that the canons were substituted for the chaplain, provided that this substitution is asserted to be gratuitous; rather, it is opposed by the testator's will, both expressed and tacit. Expressly, the testator willed that the nomination pertain to the Chapter of Canons. Tacitly also, because that trust, which the pious testator had in the college, does not seem to have been intended to be repaid in one, or at most, two chaplains. Indeed, if the right of patronage, as far as the canons are concerned, has already ceased, it must also be said that it has ceased for the Archpriest, lest we say that one and the same thing, indivisible in its nature, subsists in part, and fails in part. Nor should it be said that the Pope is not considered to be a patron.

[*Latin ed. p. 656*]

Concerning the capitular canons 656 and the legal right in question, it is asserted that they derogate from each other, without expressly mentioning this derogation, in relation to the text in chapter "De Praebend." in 6, and the Regulations of the Chancery regarding the non-abolition of the legal right, and the Holy Congregation in the aforementioned document, June 23, 1836, § Misso. In the first place, the arguments presented above clearly demonstrate that the Prince, although not expressly stating the extinction of the patronage, nevertheless implicitly established this fact through the Rescript. On the contrary, the argument is completely devoid of strength if a distinction is made between the patronage of laymen and the patronage of ecclesiastical persons, which is precisely the subject of our discussion. Indeed, it is true that the Pope should never be considered to intend to derogate from the legal right of lay patrons, unless he expressly states so, lest the laymen be deprived of their foundations, as stated in Geminianus, constitution 38, paragraph 13. Therefore, it is clear that, as stated in Felinus, in the treatise "Quando Litterae apostolicae Patron, in princip. De Luca, de iure patronat., disc. 3c, 7i, disc. 63, n. 18 et 33, also disc. 66, n. 1, it is not the case when it is a question of the legal right of ecclesiastical patronage, to which the Pope is considered to derogate through a simple concession, union, or reservation made by himself. Thus, all the aforementioned Doctors, from whom it will suffice to quote Cardinal De Luca, disc. 3p, ?ium. iç (there), state: "It is more and principally important that the legal right be that of laymen rather than that of ecclesiastical persons, in order to be subject to apostolic reservations and effects, or even implicit derogations, without the necessity of mentioning them, to which benefits are subject

Translated by churchlatin.ai, a product of Boyne Archives

by the legal right of ecclesiastical patronage, and also by lay patronage by privilege and custom, but not subject to the legal right of lay patronage by foundation or endowment. Therefore, it does not seem necessary that the Pontiff expressly derogate from the legal right in the Rescript; rather, it is the case that neither the Archpriest nor the Canons could be considered to have a right *in* the collegiate church, but only a right *to* the thing to which the legal right of patronage was attached before the Pontifical Rescript was issued. Indeed, it is easier, as is evident from the very nature of the matter, to derogate from a right *to* a thing than from a right *in* a thing. Therefore, all right to nominate, both for the Archpriest and the Canons, is extinguished.

[*Latin ed. p. 657*]

657. Regarding the chaplaincy, the presbyter, and subsequently, concerning canons, it follows that, according to proper law, the Church or the Bishop succeeds. Canon law states that whatever canons exist, and Canon 1, qu. 1, and L. 1, if anyone declines [a benefice], C. de Episcopis et Cler. Piton., de controv. Patron., allegation 14, n. 2. CONCERNING THE INVALIDATION OF THE PATRONAGE RIGHT. – Firstly, it is noted that, in commutations of pious intentions and reductions, the utmost care must be taken to preserve, as much as possible, the will of the deceased, as stated by the Abbot in chapter 31, title 26; Molinas, disputation 249, n. 7; the Rota in decree 144, n. 6; part 18, and the Sacred Congregation very frequently. From this principle, it seems to follow that, even if the will of the testator is altered concerning the number of benefices, and therefore concerning the erection of a collegiate church, at least the will concerning the patronage right, whether active or passive, must be preserved, so that the disposition is not entirely destroyed. Furthermore, from the words of the Council of Trent, cited in chapter 9, session 23, concerning reforms, which are as follows: "To abolish the rights of patrons, and to violate the pious intentions of the faithful in their institution, is not just; therefore, such commutations are to be interpreted strictly, as they are odious in law," it follows that a rescript should not be extended beyond what the Pope expressly stated. However, in his rescript, the Pope speaks only of the reduction of the number of benefices, and adds no word concerning the patronage right. – Moreover, it must be noted that in no petition was there any mention of abolishing the patronage right, whether active or passive; therefore, it cannot be assumed that the Pope mentioned it in any way. Furthermore, it should not be overlooked that, in our case, the matter under consideration is a question concerning the right of another. But it is a sacred and inviolable principle of law, as de Rubeis states (Decis. 217, p. 9, vol. I, Rec.^), that one should never presume that the testator intended to dispose of something to the detriment or prejudice of another. Fagnanus, ad cap. Concerning Rescripts. However, the distinction cited above between the patronage rights of lay-

Translated by churchlatin.ai, a product of Boyne Archives

men and those of the Church was presented to demonstrate that a special mention by the Pope was not necessary; if someone... Acta, vol. VII, page 82, n. 42.

[*Latin ed. p. 658*]

Chaplaincies 658 pertains to the case of derogation, and not to the case of extinction or abolition of the right of patronage, about which we have only to speak in the present controversy. For the Pontiff, whether by the simple collation of some benefice, or by a union or reservation made by himself, does indeed derogate from the ecclesiastical patronage, without making special mention of it, but he does so temporarily, or rather, he suspends the exercise of it for that occasion; hence, Vivianus, in the division of his work on the practice of patronage, among the ways in which that right ceases for a time, also mentions, in the same work, p. j, the derogation made by the Pope, Lib. XIV, c. 2; and in n. 26, he adds that such derogations are usually made with the understanding that they are only for this occasion. Thus also, De Luca, On Patronage, discourse 65, n. 18, and discourse 66, n. 1. Therefore, having made the distinction between a simple derogation and abolition, it immediately becomes apparent that the arguments presented above do not in any way prove that the right of patronage has been extinguished in the present question, and this is even more evident when we are not dealing here with a collation, union, or reservation made by the Prince, but only with the changed will of the testator regarding the bestowal of benefices. Therefore, it remains unshaken that the Pontiff wished that the aforementioned principle be expressed. Nor is it to be said that the state of affairs has been so altered by the Pontifical Rescript that the right of patronage has perished. For the Archpriest, for the time being, to whom the right of presentation was first granted, is in exactly the same condition as he was before the Pontiff's Rescript. Nor does it matter that the bestowals have already taken place twice; for the Archpriest has never ceased to claim his right, and therefore has never lost it. Likewise, from the fact that the bestowals have been reduced to a smaller number, it does not seem that the right of appointing for each vacancy has ceased, as the Testator granted it to them; for the number of those who appoint is merely accidental in the right of patronage, since presentation can also be made by only one person, as everyone knows.

[*Latin ed. p. 659*]

Chaplaincies 659: The difficulty that may arise from the fact that, through a Pontifical Rescript, six benefices which were originally of the status or quality of Canonries, have become simple benefices, cannot occur: for, indeed, through a change in the status or quality of a benefice or church under patronage, the right of patronage is not lost, but is always preserved, as is stated by: De Luca, De iure patronato, disputatio ex iure

Translated by churchlatin.ai, a product of Boyne Archives

subrogato, LXVI, n. II and 12, "And that a church under patronage cannot change its status for the better, and consequently cannot be raised to the status of a Collegiate church without the consent of the patron; Lotter, lib. 2, q. 8, n. g": or "If, however, such a derogation is made, the erection [to a Collegiate or Cathedral church] is considered to be made without prejudice to the patron, and consequently the right of presenting remains to the Canonry in the same manner in which it was due to him according to the law of presenting one or more Rectors or benefices." Seraph., decisions; Burat., decisions, 172, n. 30 and 31. Finally, nothing prevents a Chaplain from assisting the Parish Priest. For it is established in law that the right of patronage can subsist in benefices which are joined to the care of souls, as is evident from Trid., Session XXIV, on Reform, chapter XVIII, from Viviano, De praxi iuris patronatus, lib. 3, cap. i, n. 47, 48. Therefore, the Holy Congregation has repeatedly decided that if any benefice, whether theological or penitential, which is conferred in the manner of Parishes, is erected, the right of conferring, as well as of nominating and choosing, which previously belonged to the Chapter and other persons, is considered to be preserved, as is testified by Garz, de Beneficiis, in addition to part 3, cap. 4, n. 143, and Barbosa de Episcopis, allegation 133, n. 11 and 12. Indeed, in Amerina, on June 2, 1860 (through summary proceedings), the Bishop proposed to the Holy Congregation that a Canonry, vacant, be erected into a theological benefice, called Aloysius, belonging to the Family Pagliacci of Viterbo, by right of patronage. The patrons, when asked, refused to give their consent, fearing that their freedom to nominate might be taken away. But the Holy Congregation responded that the theological benefice should be erected from the Canonry of Aloysius, but in such a way that the patrons should nominate someone actually suitable for the office.

[*Latin ed. p. 660*]

Chapter 660. Furthermore, no one among the authorities, concerning the ways in which the right of patronage is extinguished, mentions the present case; therefore, it can certainly be affirmed that, after the Pontifical Rescript, the right of patronage has not been lost in any way. This conclusion, however, can be deduced more strongly in favor of protecting the passive right of patronage, rather than the active privilege, namely: "There is a difference" (says Piton, *De controversiis Pairisii*, allegation, I, n. 6) "between the active and passive right of patronage, since the Pope often derogates from the active right, as happens in the vacation of a benefice in the Curia, and where it is reserved by the force of a sentence of deprivation to the Apostolic See – according to Constitution 37 of Paul III, as in the case before the Rota in *Barchinonensis, Beneficii*, December 2, 1710, before the Most Reverend Caprara, and in other cases, as mentioned by Lotter, *d. lib. 2, q. 8, n. 98* and following; Cardinal De Luca, *De Iurepatronato*, discourse 65, n. 35 and following – but he does not at all derogate from

Translated by churchlatin.ai, a product of Boyne Archives

the passive right, prejudicing those to whom the institution is due by law, whether it be a direct institution, *decisions 189, n. sive 16*, before Bich, and in *Barchinonensis, Beneficii*, as above." Therefore, since the arguments that seemed to militate against the active right of patronage do not at all hinder the passive right of patronage, and since the pious Testator insisted greatly in favor of such a passive right, it follows spontaneously that, if the will of the Testator can be fulfilled, it ought to be preserved, at least concerning the passive right of patronage. With these and other things explained, the proposed doubts are to be resolved.

1. Whether the Pontifical Rescript is applicable in this case. And the answer is affirmative.

2. Whether the right of patronage, both active and passive, has been abolished in this case.

3. To whom should the Capellania be given in this case?

[*Latin ed. p. 661*]

CHAPTER 661. RESOLUTION. The Sacred Congregation of Councils, after mature deliberation, decided to respond on July 26, 1873. To I. Affirmative, and furthermore. To II. Regarding the first part, Affirmative; concerning the second part, Negative, namely, that the precedence should be given to those descended from the houses of A and P, provided that they are suitable according to the foundation, the Pontifical rescript, and the Episcopal executive decree. To III. Provision is made for what is stated in the second [point].

THEREFORE, THE FOLLOWING ARE DEDUCED:

I. Rescripts by which the pious wills of the faithful are altered must be interpreted strictly.

II. The rescript of the Prince is never presumed to have been obtained secretly or surreptitiously, unless it has been proven that the truth was concealed in the prayers, or that falsehood was suggested.

III. In order to alter last wills from a just and necessary cause, it is necessary to proceed even with an extrajudicial investigation by the Bishop.

IV. The inability to obtain a remedy from the holding of revenues provides a reason for granting reductions.

V. The Pope, whether by the simple collation of a benefice, or by a union and reservation made by himself, is considered to have derogated from the ecclesiastical patronage.

VI. Lay patronage, from a foundation or endowment, is never subject to Apostolic reservations and affections, or to implied reservations.

VII. The erection of a cathedral church does not affect the patronage of the Church in a collegiate institution, or is considered to be without

Translated by churchlatin.ai, a product of Boyne Archives

prejudice to the Patron, who therefore retains the right of presentation. Indeed:

VIII. If a canonry is established in a church with patronage, whether it be a theological or a penitential canonry, the Patron is considered to have the right to nominate.

IX. The Pope does not derogate from passive patronage, prejudicing those to whom the institution is due, except from...

[*Latin ed. p. 662*]

662. Concerning the law establishing a chaplaincy, whether it pertains to a direct or indirect appointment. X. The right of patronage ceases when the cause for which someone held the patronage is terminated. X. When the right of patronage is extinguished, either actively or passively, the Church or the Bishop succeeds according to their own right.

DOUBTS. On August 23, 1873. Summary of questions. The Bishop N. presented three questions to the Sacred Congregation of the Council, earnestly requesting their declaration, namely:

1. Having discovered, during the Sacred Visitation, that the Canons of the Cathedral Church, according to a long-standing custom always tolerated by his predecessors, had never celebrated the second Conventual Mass on certain days, as prescribed by the rubrics, due to the extreme poverty of their revenues, he inquired whether this custom could be supported by the Bishop; or rather, whether the Canons should be compelled to celebrate the second Mass according to the rubrics?

2. Furthermore, in the same Cathedral Church, the Canons provided choral service through alternating weeks. Some of them, during the week when they were not on duty, spent days and nights in a location within the Diocese, four or six miles distant from the Cathedral; thus, they remained in the Church of their Canonry only for six months and a few days each year (including even the more solemn days on which all are present). Therefore, he inquired whether these Canons should be compelled to reside more frequently in the city where the Cathedral Church is located; and to what extent?

[*Latin ed. p. 663*]

Question 663, 3. In a certain village of the same Diocese, there exists a small Convent under the title of Saint Restituta, Virgin and Martyr, which, since its foundation in the year 1602, has always been staffed by three Religious, of whom two are Priests. The question is asked whether the Diocesan Bishop is permitted, by virtue of the Decree *Ut in parvis*, dated February 1634, to visit such a Convent, its Church, and the Religious residing there. A decree was issued by the Sacred Congregation concerning this matter, after a summary examination of the case.

OBSERVATIONS FROM THE OFFICE, REGARDING THE FIRST QUES-

Translated by churchlatin.ai, a product of Boyne Archives

TION. It is clearly established from the general rubrics, and from numerous resolutions of the Sacred Congregation, that canons of cathedral or collegiate churches are bound to sing the second or third Mass on certain days. Thus, in *Civitatis plebis* on May 2, 1703, in reference to Question 1; in Clomaclen on July 8, 1818; and especially in Brundusina on February 28, 1722, and in Camerinen on August 24, 1743, in reference to Question 4, the Sacred Congregation responded: "On vigils, during the season of Lent, and on similar days on which the Masses are doubled or tripled, all are to be celebrated."

Given this, the question remains whether the custom of the canons of the cathedral church can be maintained in this case. Indeed, this prescriptive rule, which seems to be more of a presumptive rule, can hardly be maintained in such a custom. It is stated that, from a time beyond human memory, the canons have omitted this obligation of celebrating the second Mass. Furthermore, it is scarcely among the canons who raise this to doubt, that something can be prescribed concerning choral office by an unforgettable custom. Therefore, it can be concluded that the existing custom can be maintained in a prescriptive manner. Moreover, in a presumptive manner, because a custom of a very long time, and especially an unforgettable one, carries with it the presumption of the best title, and therefore also of Apostolic approval: *Rot. in Romana Locationis* on March 13.

[*Latin ed. p. 664*]

Query 664, page 178, concerning the matter of Cesarei, and the Holy Sacred Congregation in *Nullius Sub Iacento*. Juris Parochialium, January 2, 1822, § Rationabilis. It does not seem unreasonable, provided that the aforementioned Canons were summoned for a limited purpose, from which it can easily be presumed that they were dispensed from residence. It is known that the Holy Congregation has sometimes reduced conventual Masses to only feast days, based on the income received. Thus, in Camerino, June 3, 1706; in Narni, June 2, 1712; in Veliterna, March 14, 1722, to 3 days; in Pienza, January 1, 1720; in Spoleto, July 23, 1720, and in others. However, this question is resolved by Benedict XIV in his Constitution *Cum Semper Oblatas*, § 16. For the Pontiff, speaking of the burden of conventual Masses, states that any custom, even if ancient, cannot be invoked to justify their omission, and that such an omission should rather be considered an abuse of the law, and a corruption, as it is contrary to the custom of the Church. Regarding the second query, the Council of Trent, Session VI, chapter 2, decrees that all those who receive a benefice with a residential obligation are bound to reside in the place of their benefice. Given this, it must be determined whether all those who hold a benefice with a residential obligation, namely, canons, are bound to reside daily at the church of their benefice, or whether they can sometimes be excused from this residence. With regard to parish priests

Translated by churchlatin.ai, a product of Boyne Archives

and those holding benefices with the care of souls, it is clear that this cannot be admitted, as evidenced by several decisions of the Holy Sacred Congregation. Thus, in Suesana, to the 4th query, May 13, 1738; in Reggio, 1373, from the 1st decree, page 31, under the title "Benedictus instituit"; and in Fulginata, May 10, 1687, in a rescript from the same, in which it is stated that rectors of parochial churches located at a distance of 2 or 3 or 4 miles from the city, who reside during the day at their churches, cannot, for a significant portion of the year, reside at night in the city, even if substitutes are present at the aforementioned churches. However, with regard to canons of cathedral churches, and of collegiate churches, and to other those holding benefices without the care of souls, the following applies: when they, or for some just cause, or from some other reason...

[*Latin ed. p. 665*]

Those who, by chapter constitutions, or by the law of foundation, are for a certain time exempted from the service of the choir, can they be absent from the city, and from the Church to which they hold a benefice? For benefices which are not cures are instituted only by the Church for the sake of divine worship, and not for the care of souls; therefore, the reason of residence is not so strictly enforced in these benefices as in cures. Canons and those holding benefices are bound to residence only by ecclesiastical or canonical law, and by the original disposition of the founders, as approved by the Holy See. Fagnan, in Cap. Extirpandae jo § Qui vero de Praebend, no. 2. Pirhing, lib. 3 Decret, tit. 4 no. 16. Reiffenstuel, ibid. no. 14, and others, generally. Therefore, when they are excused from some just cause, or are freed from canonical obligations, and no detriment is caused to divine worship by their exemption, there seems to be no valid reason why they should not be absent from the city and from the Church. Moreover, a canon, while considering the time he spends away from the choir, seems to be subject to the obligation. As therefore, during the entire period of the granted leave, he is not bound by the law of residence in his Church, so too, it seems that the canon is excused from residence during the entire period of his absence, unless there is some urgent reason. Therefore, canons of a cathedral church, after having performed their service in the choir during the week, are clearly permitted to absent themselves from the city, as are others who enjoy the benefit of leave. And this is all the more so, because the time of absence is not expressly stated by the bishop to be continuous, but rather intermittent. But it seems that it is less permissible to be absent for more than three months, as stated in the Sacred Council of Trent, Session 24, chapter 12, on Reform: "Those who hold dignities, canonries, prebends, or portions in cathedrals or collegiate churches, are not permitted, by virtue of any statute or custom, to be absent from those churches for more than three months in any year, saving, however, the constitutions of those churches which require a longer period of service."

Translated by churchlatin.ai, a product of Boyne Archives

And this is so. For if it is admitted that canons in a certain place could be absent from their canonry for a period of time, it would certainly follow that their condition would be better than that of canons who perform daily service.

[*Latin ed. p. 666*]

Question 666: Whether these [religious] serve, for they can be absent from their Churches for three months, which is certainly only three months from the beginning [of the period]. Hence, it seems that they can only be absent from their residence for three months. Regarding the third question previously raised, it was stated that all regular convents were formerly exempt from the jurisdiction of the Bishop. This was true. However, after Pope Innocent X, things changed, for the Pontiff, by his constitution *Instaurandae*, suppressed small convents, the number of whose members could not legitimately increase the number of religious. Nevertheless, this constitution was later amended, for it was decided that small convents could be maintained, provided that, or rather, at least six religious existed within them. Hence, a decree was issued beginning with the words *Ut in parvis*, by which it was ordered that all the aforementioned convents, both those inhabited by religious and those by secular clergy, should henceforth be subject to the jurisdiction of the Ordinary of the place, as Apostolic Delegates of the Holy See. Therefore, it seems that the Convent of Saint Restituta, Virgin and Martyr, where only three religious reside, is subject to the jurisdiction of the Bishop, who, as Apostolic Delegate, can visit not only the convent and the church, but also the persons residing there. These matters having been presented to the Holy Congregation on August 26, 1873, and after all had been carefully discussed, the Holy Congregation responded: To the first question: It is to be maintained that the obligation of conventual Masses should not be sustained unless it is taught by an Apostolic Indult. To the second question: Further information is to be gathered and investigated. To the third question: Affirmative.

THEREFORE, IT MAY BE GATHERED: 1. Regarding the obligation of conventual Masses, any custom to the contrary should not be maintained. 2. And this should be entirely rejected, both in a prescriptive and in a presumptive sense, if it is an abuse and a corruption.

[*Latin ed. p. 667*]

Question 667. 3. Religious houses are subject to visitation, correction, and in every way to the jurisdiction of the Ordinary of the place, as Delegate of the Apostolic See, provided that they are not comprised of fewer than six religious of proven life, of whom at least four are priests of mature age; as also are convents erected after the Decree of Urban VIII, issued on June 21, 1623, in which religious live in a number less than twelve. From the Constitution recently issued by the Sacred Congregation, December 23, 1872.

Translated by churchlatin.ai, a product of Boyne Archives

FROM THE SACRED CONGREGATION FOR BISHOPS AND REGULAR CANONS, MONTH OF FEBRUARY, OR RATHER, OF FOUNDATION, 1873. Summary of the case. The priest Donatus Brunacci, in his last will and testament, which he drew up in the year 1717, decreed that in the collegiate church of his homeland, a canonical prebend should be established, whose holder would perform all those offices and duties which burdened the other canons of the same collegiate church. The pious testator first named clericum John Baptist Capparelli, connected to him by bonds of kinship, so that he might have access to receive the sacred orders; and after his death, he wished that the canonical prebend should be returned to the house of Dominic Capparelli, and to John Andrea Pontesilli, but with the condition that, among the suitable candidates, he who was found to be more learned and virtuous, according to the judgment of the Ordinary and his successors, should always be nominated and preferred to the others. In the event that the male line should fail in these houses, he ordered that the nearest relatives, from the houses of Campestri and Testa, should be substituted.

[*Latin ed. p. 668*]

Dispensation 668, or rather, the institution. This pious will of the testator was duly executed, by canonically establishing the aforementioned benefice, and by calling to its enjoyment the one whom the testator himself had designated. After the death, but true, first investiture, disputes and disagreements arose, since the only male member of the Capparelli family who remained was the priest Dominic; and since, upon his death, the Pontesilli family, claiming to be the sole surviving patron, petitioned for the institution of Andrew, with the favor of the cleric Pontesilli. On the other hand, Catherine Capparelli, sister of Dominic, presented her son, the priest Gregory Mari, as being more worthy than the others.

The Vicar General, after mature deliberation, "having considered, called, and judged that Gregory Mari possessed all the qualities required and designated by the aforementioned founder, Brunacci, decreed that he should be instituted in preference to the others." However, the Pontesilli family later amicably interposed an appeal against this decree, which was settled on the grounds that Mari, being advanced in age and of infirm health, was considered to be able to enjoy the benefice for only a short time. Nevertheless, after Mari's death, the Pontesilli family again exercised the right of nomination, and so the priest Jacobacci, son of the sister of the deceased canon, petitioned for his own institution. To this institution, the Testa family, and John Andrew, nephew of the cleric Pontesilli, opposed the nomination of Peter Salvadori. Hence, a new lawsuit arose, in which the Vicar General gave judgment in favor of Jacobacci: "Considering the aforementioned judgment regarding the final state." And although the opposing party appealed to the Supreme Tribunal of the Signature, the case was

Translated by churchlatin.ai, a product of Boyne Archives

lost. With these events, the families of Capparelli and Pontesilli continued to contend for the right of nomination, even after the last male line had failed, until the year 1871, when, as the benefice again became vacant due to the death of Olivanti Magliacca on April 6th, the disputes again arose. Indeed, Francis Testa, Magdalena, and Angela Magliacca nominated Octavius Magliacca, who was 17 years old, and not devoted to ecclesiastical service: Ferdinandus.

[*Latin ed. p. 669*]

The dispensation, or rather, the institution, 669, and Ludovica Molinari, and Philip Mari, named the priest N.: fourteen other persons of both sexes, some of whom were heirs of Capparelli or Pontesilli, whom Philip Mari named Emilian, born, but not a cleric. Finally, Petocchi, recalling Francis Testa after 13 years, and Peter Testa named August Petrucci, also 13 years old, and not a cleric. Therefore, Magliacca presented a petition to the Ordinary concerning the clerical habit to be worn, and the tonsure to be received. The priest N. also requested of the same Ordinary that he be preferred to the others in the election. Finally, Mary Testa, mother of August Petrucci, petitioned this Sacred Congregation for the approval of the nomination of her son, a petition which involved a dispensation from age and from the clerical state. The Ordinary, after receiving information and a vote, and after considering whether the aforementioned grace would infringe upon the rights of a third party, and after having read what we have recounted up to this point, stated: "If the right of presentation belongs exclusively to the family Testa, then the rights of no one are infringed by the admission of the petition of Petrucci; but if the power of presentation extends to the heirs and descendants of the female lines of Capparelli and Pontesilli ad infinitum, then the rights of those families will be harmed." Meanwhile, the priest N. requested of this Sacred Congregation that the prayers of the widow of Petrucci not be admitted, so that Testa might not be able to exercise any right, because the family, while still maintaining a connection with the Pontesilli and Capparelli families, in whose favor they were, had a possession that was not interrupted; and because August lacked those qualities which the founder had prescribed. Again, the Ordinary was asked whether the aforementioned families, through consanguinity, had exercised these rights in the past, or whether, together with the substitute families of Campestri and the direct descendants in the female lines of the families of Capparelli and Pontesilli, Testa had exclusively used the right of presentation. While these matters were being considered, Emilian, also a Petocchi,

[*Latin ed. p. 670*]

Dispensation 670, or rather, institution, concerning that institution for which a petition was made, and the necessary requisites were presented

Translated by churchlatin.ai, a product of Boyne Archives

for that purpose. The matter proposed is set forth below in the form of questions for consideration. A concise discussion follows. THOSE THINGS WHICH SPEAK IN FAVOR OF THE FAMILIES TESTA AND CAMPESTRI. - It is noted, by virtue of office, that the right of patronage clearly appears to belong to these families, since the founder prescribed that, after the death of the cleric named by him, the canonical right should devolve to the houses of Capparelli and Pontesilli. - Indeed, although in matters indifferent, such as the right of patronage, the words "family" and "house" do not, by their very nature, determine a relationship of kinship, nevertheless, it is accepted in Italy, by usage and custom, that such expressions (provided that there are no arguments to the contrary) do not designate equally those who are related and those who are akin, but rather only the former, and the latter only as auxiliaries (cf. Ita Bonf. *De fideicommissione*, title 2, section 8; Card. De Luca, *de iure patronato*, discussion 60, number 30; Piton, *de controversiis patronatu*, allegation 100, number 12c; Rota, decree 230, number 22, before Otthobon). However, in the case proposed, not only do reasons suggesting otherwise seem to be completely absent, but there is also an explicit mention of the surname, which further restricts the testator's disposition to only those who are related by blood, provided that the women constitute a completely different family. The Rota, in the case of the Hidruntine benefice, § 6, and in the confirmation, January 21, 1737, § 5, and July 1, 1837, §§ 6, 7, before Herrera. Furthermore, there is the reason that the houses of Capparelli and Pontesilli are called impersonally, and it is well known that a truly and absolutely impersonal designation includes only those who are related by blood. Card. De Luca, *de iure patronato*, discussion 33, number 4, paragraph 3; Piton, *de controversiis patronatu*, allegation 3, number 34 and following; *Disceptationes ecclesiasticae*, volume 2, discussion 33; Rota, in the case of the Piacentine canonry, January 13, 1723, before Cerro; Aquilana jurisprudence, March 10, 1732, § 7, before Amadeo.

[*Latin ed. p. 671*]

Dispensation, or rather, institution, 671. This is supported by the Testator himself, who, in establishing the substitution, stipulated that "in the absence of a male heir in those houses, access to substitution by the closest relatives from the Campestri and Testa families should be permitted," from which it is clear that agnatic kinship alone was exclusively established in the patronage of the Capparelli and Pontesilli families, so that, once extinguished, no place is given, either directly or subsidiarily, to relatives, but rather to other families altogether. Furthermore, in the aforementioned matter, the male line of the established families has long since been extinct; the aforementioned Magliacca, N., and Petocchi, and those who bear those names, descend from those same families through the female line. Therefore, none of them should be considered, either because they belong to a

Translated by churchlatin.ai, a product of Boyne Archives

different gender from those called, or because they are those who could not have been legitimately called. Piton, in *Parer, eccl.*, n. 12, p. 2, on controversies regarding patronage, allegation 65, n. 2; Rota in *Romana Fideicommissi de mutinis*, June 23, 1659, before Muto; *Canonicatus of Civitatis Castellanae*, March 12, 1714, before Soto. Assuming that the male line of the Capparelli and Pontesilli has already been extinct, it also seems verified that the substitution in favor of the Campestri and Testa families has taken place, and that all rights, both active and passive, have been vested in them. The possessory nature of the matter does not present a difficulty, since, as Piton states in *Parer, eccl.*, n. 12, p. 2, "the law of foundation must be clear, and must result from a public instrument, and even more so, the erection of the benefice in favor of the Archdeacon, made by the Ordinary, in these terms, never takes into account the last state, because a clear petition is required, which is also derived from the law of foundation, which requires legal explanation, as in point of patronage, allegation 5, Rota, etc." Regarding controversies, n. 5. Furthermore, no recourse could be made in matters judged in favor of relatives, except for the fact that "what is done or judged between others does not harm others," L. 2, C; but these do not seem to apply in the aforementioned matter, since it was a matter concerning female relatives of the Capparelli and Pontesilli, who are included.

[*Latin ed. p. 672*]

Dispensation 672, or those granted in the patronage, pertain rather to the mere institution. Arg. L. Gallus § now concerning the law, titles concerning ecclesiastical goods and posthumous arrangements, Menoch. cons. 802, number 2; Molin. de primo gradu Hispanico, book 3, chapter 13, number 6; Fusar. de subsidio, question 436, numbers 17, 32, 33; Peregrin. de Fideicommisso, article 26, number 2. Having these precedents, Augustus Petrucci seems to be the only one passively called, as one who has followed the nomination of legitimate patrons. - It does not impede that Francis Testa, with the favor of Emilian Petocchi, gave his nomination, because, indeed, nomination is considered as an imperfect act in law, which does not grant any right to the one nominated until the patron may withdraw, and it may be changed before it is presented to the Ordinary. Lambert de iurep., book 2, part 2, question 7, article 2, numbers 2, 3, article 3, number 1; Piton, de controversiis patronatus, allegation 61, number 13; Rota decis. 37, number 13, before Ubago. But if Petrucci lacks the necessary qualifications, such as age and tonsure, which are required for the benefit in law, this ecclesiastical impediment must be overcome, because it is not forbidden for patrons to present even an unsuitable candidate, provided that he becomes suitable within four months, by requesting an analogous dispensation. Concerning the matter, Loti. de re beneficiorum, book 2, question 6, number 20; Piton, de controversiis patronatus, allegation 2, number 16. Indeed, reasons exist

Translated by churchlatin.ai, a product of Boyne Archives

to obtain this dispensation, because the passive calling of Petrucci and his kinship with the legitimate patrons are clearly listed among the just causes for obtaining a dispensation, as stated by the Holy Congregation of Councils in Mutina, on August 24, 1844, to which is added the poverty of the petitioner. Moreover, the grace requested does not infringe upon the right of another, if neither Magliacca nor Petocchi possess any such right, since they themselves are unsuitable; but the priest N., being deprived of the parish by this Holy Congregation, as being unworthy, must be removed from obtaining ecclesiastical benefits. Cap. Praelat. Reiffenstuel, book 3, decrees, title 37, 10, number 60.

[*Latin ed. p. 673*]

Dispensation or rather, institution 673. Barbosa, *De officio et potestate Episcoporum*, part 2, allegation 43, number 11; Layman, *Liber Primus*, treatise 3, part 3, chapter 4, number 3; Rota, decision 301, number 3, part 1, question Q, volume 2.

THOSE THINGS WHICH REMAIN IN FAVOR OF RELATIVES. – Notwithstanding these things, it is noted that the present controversy concerning the institution is merely possessory, and therefore, it should not be departed from in the nomination of putative patrons, as Piton teaches in *De controversiis patronorum*, allegation 66, number 42, saying: "It seems to be concluded in the judgment of the institution that the presentation of the putative patron should be maintained, even if another has proven himself to be the patron, reserving this right for future vacancies, as is affirmed by the well-known text in the chapter on consultations concerning the right of patronage." Lotter, *De Beneficiis*, book 2, question 8, number 107; Rota, *De executione litterarum apostolicarum*, part 1, chapter 3, number 132; ibid., in Milan, priorate, February 13, 1700, §; and also before the Most Reverend Father Don Motines, Dean, February 14, 1701, §; and even more so before the Most Eminent Cardinal Priolo, and in the Pension of the Benefice concerning the execution of the letter of March 17, 1710, §; and furthermore, before the Most Reverend Father Aldovrando. And indeed, the true question is exclusively between those who are nominated and who legitimately cannot claim the patronage, lest by doing so the rights of a third party be violated, while, on the other hand, the legitimate active patrons, who are rightfully entitled to initiate this controversy, are absent and extraneous to the actual question. Therefore, it would seem that this controversy should be resolved according to the last state of affairs, as if, according to the nominations made by those who are in possession, the right to grant [the benefice] is conferred. Piton, *De controversiis patronorum*, allegation 5, number 10; Rota, in the Pension of the Benefice concerning the execution of the letter of March 10, 1710, before Aldovrando. However, in fact, there is doubt as to whether the possession favors the relatives of the families of Capparelli and Pontesilli, who, as

Translated by churchlatin.ai, a product of Boyne Archives

the sole descendants from the female line of these families, according to the Ordinary's report, exclusively exercise this right in the most recent presentations.

Indeed, this state of affairs, with its power, consists both in the possessory and in the petitionary aspect, and is supported by the Acts, volume VII, page 82, solemn proceedings 43.

[*Latin ed. p. 674*]

The dispensation, or rather, the adjudged institution, issued immediately after the Testator's death, in Aversa, against the dissenting party, the Rota in the Isolana Benefice, March 16, 1696, §. This matter was also before Trenville, in Compostela, on the 28th of November, §. Regarding the affair, June 17, 1697, §. However, before Priolo, in Asturica, the parochial court, on February 6, 1699, §. Such was the case before Scotto, and concerning the centennial observance, which creates doubt as to the possession of relatives, pertaining to the families of Caparelli and Pontesilli, allegation 8, number. Furthermore, it is evident from the arguments presented by Piton and Capparelli that these reasons, even in the petition, demonstrate that if the Testator had intended to include only his closest relatives, his disposition would have been invalid, since in that house there existed only one male priest, Dominic, along with three sisters, from whom the current patrons descend; therefore, in order that the Testator's will not be considered frustrated, it must be concluded that in the houses of Capparelli and Pontesilli are included both relatives and those who are not relatives. And to this understanding also concur the res judicata, which have force in defining the nature of the patronage, the Rota in Comen. Trenville, concerning the Chapel, March 31, 1702, §. And these also, before and even in establishing the interpretation of the Testator's will, the perpetual, Honded. cons. 62, number 30, book 1; Piton, concerning patronage, allegation 23, presume a title that is suitable for the very foundation, the Rota decided 2226, number 14, before Coccino, decided 630, number 7, before Emerix, June, decided 64, number 23, page 17, which certainly provide arguments that persuade one not to depart from the last decision. With these premises, the Consultant, considering each of the presented individuals, noted that the aforementioned Magliacca and Petocchi appear to be preferable to Augusto Petrucci, since the latter is neither included in the general category of those called to enjoy the benefice, nor does he possess a legitimate nomination. Furthermore, the priests of the fourth order appear to be preferable, since, having fallen into infamy, they must be completely removed from obtaining a canonry from the collegiate church. In comparison, however...

[*Latin ed. p. 675*]

The dispensation, or rather, the institution, between Magliacca and Petocchi: here, the latter seems to have the advantage over the former,

Translated by churchlatin.ai, a product of Boyne Archives

both because he requires only a dispensation from the clerical state, while the other is unfit in two respects, either by lack of tonsure or by age; and also because, being of greater age, all other things being equal, he rightfully holds precedence according to the decree *Panimoll*, title [omitted], canon [omitted], number 12; *Amostaz de Causis piis*, book 3, chapter 10, number 46. On the other hand, Petocchi seems to have the advantage over Magliacca, both because of the greater number of votes received from the patrons, and because of his greater suitability for studies, and a more evident vocation for the ecclesiastical life. However, the priest JV. observed that the fact of infamy is not sufficient to deprive the candidate of the right to the requested office through nomination, according to what is established by Garzia, *De Beneficiis*, page 7, chapter 8, especially if, after the sentence has been pronounced, he offers restitution. Therefore, with this removed, the cleric Magliacca seems to be the one to whom the institution should be granted, as the only suitable candidate presented, given the difficulty, since all the others are unfit and require a pontifical dispensation, which is rarely granted when an unfit candidate is present, as is evident here; see *Cremonen. S. C. C. Capellaniae*, July 8, 1702; *Balneoregien*, November 26; and *Terulen*, August 27, 1763; and *Montis/alisci Capellán*, November 29, 1862. Indeed, no presentation of an unfit candidate should be considered, unless the patron adds the condition, within four months, of requesting a dispensation, as stated by Viviani, *De iure patronato*, book 10, chapter 1, number 18, which is lacking in this case. Furthermore, it must be added that Magliacca did not submit any petition to the Holy See, but only to the Ordinary, in order to be admitted to receive the clerical habit and tonsure; whereas Petrucci and Petocchi presented a suppliant petition to the Holy Congregation, in order to simply obtain the institution in the canonry, and although in this petition a request for a dispensation was implicitly implied, it would have no validity, since it was presented after a year from the granting of the nomination, and therefore after the useful four-month period had elapsed. See Lambertini, *De iure patronato*, book 2, question 3, article 3, number 3; article 5, number 3; Viviani, *De iure patronato*, book 8, chapter 6, numbers 10 and 24; Garzia, *De benefitiis*, page 8, chapter 2, number 3. These points considered, the proposed solutions must be resolved.

[*Latin ed. p. 676*]

676. Doubts concerning the dispensation, or rather, the institution. 1. In what case, and with whose favor, should a dispensation be granted? And to this, the answer is negative in all cases. 2. Should the institution be granted by the favor of the priest N.?

RESOLUTION. The Sacred Congregation of Bishops and Regular Canons judged, on May 30, 1873, that, concerning the first and second doubts, the answer should be: Negatively in all cases.

Translated by churchlatin.ai, a product of Boyne Archives

A. The Ordinary shall provide, according to the law of devolution, safeguarding the rights of the Patrons, for successive vacancies, both in the case of a petition and in the case of a vacancy in possession.

THEREFORE, THE FOLLOWING MAY BE GATHERED:

I. Although in the law of patronage, the words "family" and "house" do not, by their very nature, determine the line of agnatic succession, it has nevertheless been received in practice that such expressions, unless there are contrary arguments to the contrary, do not designate all agnates and relatives equally, but only the direct ones first, and others as secondary.

II. The nomination of Patrons should be considered as an imperfect act, conferring no right upon the nominee, before it is presented; hence, a lay Patron can withdraw from it and it can be changed, before it is presented to the Ordinary.

III. The presentation must be made within the legally prescribed time; otherwise, the power to provide for the vacancy may devolve upon the Bishop. The time prescribed for presentation is six months for an ecclesiastical Patron, and four months for a lay Patron.

IV. Within the time allowed for presentation, a petition for obtaining a dispensation must be presented; otherwise, no consideration will be given to it.

V. The power to provide for the vacancy may devolve upon the Ordinary whenever those presented lack the qualities which the pious Founder prescribed in favor of or for the honor of the Church.

[*Latin ed. p. 677*]

Regarding the rights, privileges, and exemptions of January 677, 1874. Summary of the case. Serious complaints have been presented to the Holy Congregation from the year 1860 concerning the Venerable Sodality of the Holy Rosary established in the Church of Saint Christopher in the city of A, within the boundaries of the parish of the Cathedral Church. The reason for these complaints was that the Sodality had exercised certain rights and privileges which it claimed to possess by virtue of its affiliation with the Archsodality of the same name existing in the City of Rome.

Similar complaints concerning another Sodality in the same city, under the title of the Most Sacred Heart of Jesus, had also been presented to this Holy Congregation, claiming the same rights due to its affiliation with the Archconfraternity of Saint Theodora, which exists in Rome in the Forum Boarium (commonly known as Campo Vaccino).

When questioned, the Bishop, in his report and statement, explained that the Confraternity of the Holy Rosary established in the aforementioned Church of Saint Christopher not only claimed spiritual benefits, but also

Translated by churchlatin.ai, a product of Boyne Archives

rights, indulgences, exemptions, and privileges belonging to the Roman Archsodality of the Holy Rosary, such as having its chaplain wear a black cassock to conduct funerals, and celebrating Mass in the sickroom of the Sodality members, all of which, he asserted, had been done with the consent of his predecessor, the Bishop.

Furthermore, he added that the chaplain of the same Sodality receives the deceased, celebrates Mass, and performs the funeral rites, excluding the parish priest in all matters, although the church of the Sodality is located within the boundaries of his jurisdiction.

This controversy was followed by another, almost similar, dispute between the parish priest of Saint Martin and the Sodality commonly known as "dei Sacconi," which is located in the parish of Saint Julian. It had happened more than once that someone from the city of A would choose a burial place and funeral honors within the church of the aforementioned Sodality, which possesses its own cemetery, and often the family of the deceased...

[*Latin ed. p. 678*]

The members of the [Sodalitas] of [S. Martini], who, lacking a burial ground of their own and any special privileges, wished to deposit [remains] there, and the parish priest of [S. Martini], considering it his right to perform the funeral rites of his parishioners, even in a church not his own, requested that this Sacred Congregation ensure that his rights be observed and protected. After the matter had been brought before the Sacred Congregation, and after it had twice postponed a decision, finally, on May 30, 1873, it decided that the matter should be reconsidered, with all previous resolutions taken into account, and also with due regard to the Constitution of Clement VIII, of December 7, 1604. Therefore, having considered these matters, the doubts that are set forth at the end are to be resolved. A summary of the discussion follows. OBSERVATIONS FROM THE OFFICE. Firstly, it is generally noted that, in these matters, it is useful to clearly state the privileges that have been granted to the Archsodalitas of the Dead, so that the minds of the Most Reverend Pontiffs may be more enlightened, and so that the limits within which these privileges are to be exercised may be determined. Indeed, if these privileges are examined, which have been granted since the year 1560, it is clear that some of them relate to the original purpose of the institution, while others are more concerned with promoting the dignity of the same Archsodalitas. To the first category certainly belong the privileges granted by Pius IV in his Letters "Divina disponente Clementia," concerning the association of the bodies of the deceased and their burial in the parish churches; Pius granted, in fact, the privilege of burying [remains], and also the privilege concerning [remains] found in the fields. Furthermore, the prescriptions of Pius V, in his Letters "Cum inter caetera" of March 1871, which were

Translated by churchlatin.ai, a product of Boyne Archives

intended to resolve the questions that had arisen between the parish priests and the Archsodalitas, concerning the notification of [remains] frequently found, are to be considered.

[*Latin ed. p. 679*]

They had granted 679 rights and privileges to the first Government and had declared themselves ready to bury them; therefore, they ought to carry this out themselves; but if, on the contrary, the Government should become certain of the existence of this fraternity, this duty would be demanded of the Arch-Confraternity. To this provision, the same Holy Father added the privilege of celebrating Mass one hour before dawn, and also one hour after midday. Other privileges, however, belong to a different class, such as the permission to celebrate Mass in the home of a sick member, and the faculty of freely remitting one of the capital penalties each year, and other similar things. With this order proposed, there is now a criterion present by which a clear and just judgment can be rendered in each question that arises: for those privileges which concern the end and purpose of the institution cannot but emanate from the Sodalities, provided that he who wishes to achieve the end, must employ the means; but other privileges follow the common laws, and therefore, these laws must be applied to judge whether they should be abolished or retained in each case. The formulas and methods by which these privileges are granted are prescribed in the Constitution of Urban VIII, dated 1604, in these words: "To the fraternity and to the Congregation being aggregated, only those [privileges] are to be communicated, which, on the 7th day, are." To this, for the purpose of establishing, founding, or granting indulgences, faculties, "other spiritual graces, and indulgences which are granted to the Order, to the Religion, to the Institute establishing it, to those establishing it, and to those communicating with it, or to the Arch-Confraternity and to the Congregation being aggregated, specifically and in particular, and not those which have been granted to them in any way by extension or communication, and those indeed which can be communicated expressly and in particular." § 5. "And the statutes for the governance of Orders, Religions, Institutes, or those establishing and founding them, and the Arch-Confraternities, and the communications and privileges being aggregated, and those by which the aforementioned are made, are made to the fraternities, and to the Congregations being established, founded, and aggregated, and those communications and privileges are made to them."

[*Latin ed. p. 680*]

680 "Rights and privileges cannot be granted, unless they have first been examined by the Diocesan Bishop, and approved for the reasons pertaining to the place, and remain subject to the decrees of the same Bishop, and to moderation and correction in all things." § 6. "Furthermore, We wish

Translated by churchlatin.ai, a product of Boyne Archives

and order that the aforementioned Orders, Religious Institutes, and Institutions that establish, found, and administer, as well as Archiconfraternities and Congregations that aggregate, diligently observe the formula for establishing, founding, aggregating, and administering, which We have most recently approved, according to which privileges, Indulgences, faculties, and other spiritual graces and indulgences shall be granted specifically and expressly to the aforementioned Orders, Religious Institutes, and Institutions that establish, found, and administer, or to Archiconfraternities and Congregations that aggregate, and not by communication, nor by analogy as mentioned above, to the aforementioned Confraternities and Congregations that are established, founded, and aggregated, and to those with which communications are made." Moreover, it was established in the Decree of the City and the World concerning the institutions or establishments of Confraternities, approved by the Roman Pontiff on January 8, 1861. In this Decree, after it is stated that "whatever" may be communicated, which are only those that have been granted specifically to the aggregating entity, it is added: "and privileges shall not be communicated to the society in a general form of words, or by analogy, but expressly and specifically, and through the aforementioned formula approved by the Pontiff itself, all of which are found in the same Constitution under penalty of nullity." After some abuses were observed, "lest any doubt arise regarding the validity of these institutions or aggregations, the Holy See benignly validated the institutions and aggregations previously made in which something of the aforementioned was lacking, which was to be completed by the Constitution."

[*Latin ed. p. 681*]

The rights and the "enunciatum," or decree 681 concerning privileges, as expressed above, or that which is prescribed therein, must be fulfilled, and it was also commanded that, in the future, in such erections or institutions, or aggregations, at least those principal prescriptions of Clement VIII, which are in agreement with the substance of this Constitution, and which have been approved with variations by the Holy See, be included in the formula, along with a model of which is to be provided to those concerned, to be preserved in the records of the Holy Congregation, and so that it may be delivered separately to the aggregated Society by the Order, Institute, or Archiconfraternity that is aggregating it, and that a printed list be clearly separated from the formula, and of Indulgences, and also printed Privileges, but all must be recognized by the Ordinary of the place; and the printing of this is permitted only for this purpose, even if the granting of Indulgences has been obtained from several Briefs, etc., notwithstanding, etc." Furthermore, it must not be overlooked that the Holy Congregation, on October 19, 1866, after stating that, according to the decree of January 8, 1861, the formula of aggregation must at least substantially agree with

Translated by churchlatin.ai, a product of Boyne Archives

the prescriptions of Clement VIII, and that at least the principal chapters of that Constitution must be included with variations approved by the Holy See, continued as follows: "Now, however, Our Most Holy Father Pope Pius IX, at the urgent request of some Superiors of Religious Orders, and Rectors of Archiconfraternities, so that such letters of aggregation might be more conveniently prepared and sent to the respective Confraternities, graciously granted, in an audience held by the Most Eminent Cardinal Prefect on October 19, 1866, that the aforementioned exposition of chapters may in the future also be given separately from the letters of aggregation, but in such a way that it is entirely communicated together with the aforementioned letters, and is expressed in the same formula. All other things, which are prescribed both in the praised Constitution of Clement VIII, and in the aforementioned decree, are to be observed and remain in full force."

[*Latin ed. p. 682*]

Regarding articles 682 and privileges: But when the matter of a sodality in the city of A, whose foundation dates back to the year 1607, is discussed, reference is made to resolutions 1 and 6, which are called special, provided that some extension granted by the Most Holy Pontiff to the Savonen Aggregation is involved. Questions have arisen concerning the admission of an aggregation, which must, in some respects, be subject to controversy regarding privileges; on June 13, 1700, for example. Indeed, the Sacred Rota established this criterion: "The aggregation communicates to the aggregated all and each privileges of the aggregator. When Pope Pius IV granted the Archiconfraternity of Prayer and Death of the City the faculty of wearing the stole, it followed that, just as this was successively communicated to the Confraternity of Financi in the same aggregation, so all and each privileges pertaining to it were communicated, by virtue of the aforementioned communication of privileges, as if they had been granted to the Confraternity from the beginning, according to what is transmitted through Oltrad. cons. 3000, no. 3, etc." To this was added that the defender of the sodality in the city of A, in order to defend the identity of the privileges with the Archisodalitas of the City, presented two decisions, one of the Sacred Rota in Brixiensi regarding the aggregation, both concerning the good right and the maintenance of the day of June 22, 1712, before Lancetta, and the other of the Sacred Congregation on September 3, 1718, in Novarien. Aggregation. Indeed, in the first, a question arose concerning the privileges between the Archpriest and the Chapter of the Collegiate Church of S. Nazarius and Celsus in the Diocese of Brixiensi, and the Venerable Sodality of Death of the same city, which had been aggregated to the Roman Archiconfraternity. The Sacred Tribunal thus confirmed the rights of the aggregation: "Since the validity of the aggregation is established, it necessarily follows that the aggregated confraternity must enjoy all and each privileges, indulgences, and graces, both spiritual and temporal, which pertain to the aggregating

Translated by churchlatin.ai, a product of Boyne Archives

Archiconfraternity, for it is the virtue and nature of the aggregation that..."

[*Latin ed. p. 683*]

683. "The aggregate body receives all the qualities of the aggregate." And after having refuted certain reasons for doubt, among which the following: "The objection arises that, in terms of common law, this applies to those confraternities which do not enjoy the benefits of aggregation; however, with regard to the aggregated confraternity of which we are speaking, to which the qualities and indulgences of the aggregator have been specifically granted, namely the free faculty of exercising all the aforementioned acts independently of the local Archpriest or Parish Priest, and consequently, it is considered to be exempt from any third-party prejudice." The same criterion, established in this judgment regarding the legitimate right, was confirmed in another case concerning maintenance, where it was noted that "all privileges are contained in the Constitution of Pius IV, and therefore, those faculties with which we are concerned in universal law, by the very fact that the possession of the confraternity regarding the exercise of all acts is considered to be included in the universality, is considered to be preserved as its quasi-possession." In Novare, when a question arose between the Parish Priest and the Sodality of the Holy Death, all the rights, faculties, indulgences, and exemptions, with which the Sodality enjoys, and which are confirmed by the Apostolic Constitutions, were likewise affirmed. The question posed was: "Do these aggregated bodies enjoy the indulgences, or rather, even the privileges of the aggregating Archconfraternity in this case?" The answer was: "They enjoy the indulgences and privileges of the aggregating Archconfraternity." Therefore, these later decisions, the Defender concludes, leave all the privileges in full force, as granted in the Constitution of Pius IV. Having generally discussed these matters, the Consultant proceeds to examine each of the proposed questions, and the reasons that can be offered from various sources. Therefore, these matters require further explanation.

[*Latin ed. p. 684*]

Regarding item 684 and the privileges concerning the first question, it is noted that the privilege of celebrating Mass in the homes of sick members was granted by Pius IV in the aforementioned Bull, with these words, on November 17, 1566: "And also to these same confreres, it is permitted to celebrate Mass in their homes, and to each of them, during their infirmity." Indeed, it is evident that this privilege is included in the aggregation formula of the year 1607, as the same text is repeated there verbatim.

However, the current Rectors of the Archisodalitii maintain that this privilege remains in force, with only this limitation added: that if the parish priest wishes to administer the Eucharist as viaticum to the sick person, then the Mass should be celebrated by the aforementioned parish priest.

Translated by churchlatin.ai, a product of Boyne Archives

On the other hand, it is noted that this privilege appears to have been implicitly abrogated by the Holy Council of Trent, session 22, in the decree concerning what must be observed and avoided in the celebration of Mass, where it is ordered to the bishops: "That private homes, and indeed any place outside the church, which is dedicated solely to divine worship and prayer, should be designated and visited by the aforementioned ordinaries, and that this holy Sacrifice should be celebrated there by secular or regular clergy."

This abrogation is supported by Gatticus, in his work on domestic oratories, chapter 15, where he states that, while before the Council of Trent, the bishops had very broad powers in granting private oratories, these powers were almost entirely revoked after the aforementioned decree, except in certain cases.

Furthermore, the Holy Congregation of Oratories, in its response of July 1, 1833, in the case of Calateioren, to the question: "Can a bishop, for a just reason, grant permission to celebrate Mass in private oratories?" replied: "No, unless there are very important and urgent reasons, and in a particular instance." Infirmity is explicitly excluded among these reasons. Indeed, the same Holy Congregation, when questioned, replied in the negative.

[*Latin ed. p. 685*]

The rights and privileges granted by the Bishop of Syracuse, as stated in "Ordinarii possint" on March 18, 1617: "Can a Bishop grant permission to celebrate the Holy Sacrifice in private chapels, when some necessary reason exists, such as when a person of great importance, or a primary minister of public affairs, or nobles, are prevented by various circumstances from attending Church when they are ill, or advanced in years?" On May 27, 1617: "The Congregation of the Council judged that a Bishop cannot, for any serious reason, grant permission for the Holy Sacrifice to be celebrated in private chapels." Indeed, as Gatticus adds, citing the authority of the same Holy Congregation, a Bishop cannot grant such a faculty by his own right, even during a plague, without a special dispensation. "Moreover, even during a plague, a Bishop could not, by delegation from the Apostolic See, permit Masses to be celebrated in a private house, although, because of the common needs of many, Church officials are obligated to provide that sacrifices be celebrated even in the open air, and in public places and squares." In truth, a special delegation was granted on September 28, 1657, during a time of plague, to certain Bishops, by which they were permitted to grant Masses to certain individuals in private chapels. The intrinsic reason that the cited resolutions offer is this: "Ecclesiastical precepts do not obligate when a grave inconvenience is involved; therefore, when there is a very serious reason why someone is prevented from attending Mass in a sacred place and according to the law of the Church, and there is no longer any reason why they should not attend, then the Bishop must grant a

Translated by churchlatin.ai, a product of Boyne Archives

dispensation so that the Holy Sacrifice may be celebrated in a domestic and private chapel." Finally, this very faculty is denied to Bishops even when the precept of administering Viaticum to the sick is urgent, even though the public Church is closed, and the roads are difficult and dangerous. In truth, when asked by the Holy Congregation whether, for these reasons, they would grant this faculty even for a single occasion, they replied: "After consultation with the Most Holy [Pope], it was ordered that no such license be granted in any way." - Fagnanus agrees.

[*Latin ed. p. 686*]

686 In the chapter concerning rights, in these privileges, it is stated: "Portugal requested that the Holy See grant permission to celebrate Mass in a suitably furnished private home, for the sick, because in those regions there are many places so dispersed and remote from parishes that it would be very inconvenient to administer the sacrament of the Eucharist." The Holy Congregation responded: "It is not to be granted." Regarding the same matter, Gatticus, in the aforementioned work, observes: "Therefore, it seemed better to the [authorities] that a prudent and perhaps infirm person should depart this life, rather than to offer an opportunity to others for more serious acts of irreverence by relaxing the strict prohibition of the Council of Trent, which had often occurred if Mass could be celebrated in private homes, so that the Viaticum could be administered during the sacred action."

Regarding the second point, it was noted that the privilege granted by the Archsodality to wear the black stole in the association of the dead could not be denied; in the document of June 1742, no. 5, it states: "Whoever, whether a chaplain or a parish priest, participates in the aforementioned association, may wear the cotta and stole, whether or not [another] is present." This applies to Brixen; another case is Savona. In the document of the Aggregation, June 13, 1701, before Motines, it is stated. Furthermore, it was found that all Roman Sodalities, when they proceed collegially, whether in the association of the dead or in public processions, have their own chaplain wearing the cotta and stole. Nor does the resolution of the Holy Congregation of Rites in the Decree of December 10, 1702, concerning the question XXII: "Can the members of the aforementioned confraternities wear the stole in these processions?" The response was: "No, outside their own church." This does not extend to funeral processions, according to subsequent decisions of the Holy Rota, because it does not expressly invalidate the existing apostolic privileges, and it appears that this is how the Novarese Aggregation interprets it, in the aforementioned document, no. VI.

[*Latin ed. p. 687*]

He denied the privileges of the Chaplain, and the privileges of the So-

Translated by churchlatin.ai, a product of Boyne Archives

dality, stating that "it is not possible for the Roman Archiconfraternity to wear its stole in these processions 'outside the Oratory'," noting that in the previous question concerning funerals, it was expressly stated that it was not about processions, but in general about processions carried out by Sodalities "both within and 'outside' the aforementioned Oratory." However, some light seems to be shed on this controversy by the decree of the Holy Congregation of Rites in Velletri, decision 4457, as reported by Car, which reads as follows: "In the 'church of St. Mary of the Snows' in the city of Velletri, canonically established since the year 1600, there is a Sodality of the Holy Wounds of St. Francis, which was granted special privileges and prerogatives by His Holiness Clement VIII through apostolic letters in the form of a Brief, dated 1604, privileges and prerogatives which the Archiconfraternity enjoys under the aforementioned title in the City. However, without anyone objecting, the Chaplain has always worn the cope and stole in public, both solemn and funeral processions, both within and outside his own church. Recently, the Parish Priest of the city attempted to deprive him of this custom under the pretext that the parish stole is a distinctive mark of jurisdiction, and that the Holy Congregation, in a general decree of January 12, 1703, concerning question XXII - 'Whether Chaplains of Confraternities may wear the stole in these processions?' - answered 'No, outside their own church.' With these reasons presented, they claim that the stole should not be worn hanging from the neck, but rather like a shawl or a band placed on the arm." To avoid these disagreements, recourse was made to the Holy Congregation of Rites, which decreed as follows: "Considering the long-standing custom, and having carefully considered the general decree, and noting that, contrary to this, the practice persists even in the City, and finding it to be fitting and appropriate that the Chaplain of the Confraternity be distinguished from simple clerics, in accordance with the report of my undersigned Secretary..."

[*Latin ed. p. 688*]

On September 27, 1824, it was decided that the rights and privileges of the clergy must be observed: "The custom must be maintained, and nothing new introduced." Furthermore, to this decree of the Holy Congregation, the following note was added: 1. That the prohibition made in the aforementioned decree, which forbade chaplains from wearing the stole within their own church, does not have force in all places, but has fallen into disuse, with the consent and approval of the Ordinaries of those places; 2. That such a prohibition in Rome applies only to Rectors and chaplains, who wear the stole when they are with their superiors, but separately from them [Decree of the Vicariate, January 27, 1680]; 3. The practice prevailing in Rome is cited, in which chaplains wear the stole in all processions, whether they are for the burial of the dead or for some other purpose; 4. Finally, it is deemed fitting that chaplains who accompany the parish priest should

Translated by churchlatin.ai, a product of Boyne Archives

wear the stole, "lest, even if they are not standing beside him, they be mistaken for simple clerics, which is a distinctive mark." Nor should they be envious or cause disturbance; "the wearing of the stole by them does not infringe upon their rights or privileges, for it is a matter of precedence." And indeed, with the exception of the Roman Pontiff, who always wears the stole as a sign of universal power and jurisdiction, as is noted in the decree 4400 of the Holy Congregation of Rites: "Those who believe that the stole is a sign of jurisdiction are mistaken. It is a distinctive mark only in those actions which require that sacred vestment, and although we are speaking of actions that can be common to all priests, they cannot be performed without a special mandate from the parish priest." Furthermore, the priestly stole is a garment that is equally suitable for all priests, but not always. To demonstrate this, the example of bishops is cited, who are not always required to wear the stole when administering the Sacraments, according to the Ceremonial, but only at certain times, and according to the decree of the same Holy Congregation of Rites of September 7, 1816, which forbade the wearing of the stole on weekdays, unless it hindered the performance of divine services. From these considerations, it follows spontaneously that nothing prevents [them] from...

[*Latin ed. p. 689*]

Regarding the aforementioned Chaplains, the stall number 689 of the Sodality's privileges is used, even in the presence of the Parish Priest, provided that the conditions stipulated in the aggregation's documents are observed, under which this privilege has been granted. However, whether these aforementioned Chaplains can use the stall outside the city in public processions, this must be determined according to the specific customs, and other circumstances of the place and the individuals involved.

Concerning the THIRD QUESTION, the Consultor notes that two principal issues are raised within it: the first is whether the heirs and parents of the deceased can choose a burial place; the second concerns the personal, territorial, and mixed rights that belong to the Parish Priest, while the body is being transported to the church where it will be buried.

Regarding the first point, it is evident from the Holy Congregation of Councils for Burial and Funerals, in Ariminen, of May 14, 1823, that, by an edictal law issued by the Holy Congregation of Consultation in the year 1871, by virtue of which the bodies of the faithful are to be transported to the public cemetery, and the cemeteries have been substituted for the individual burials of churches for the sake of public health, it has come to pass that the Church which had the right to bury in its own cemeteries now exercises this right in the public cemetery; therefore, this right has not been abolished, but rather the place of burial has been changed, which certainly does not prevent the collection of fees and the performance of funeral rites.

Therefore, since all the rights of the burying church have been preserved,

Translated by churchlatin.ai, a product of Boyne Archives

and the right to the material burial of the body remains in force, the right of choice remains, notwithstanding any dispositions, emanating from any authority.

It cannot be inferred from the foregoing that the right to choose the burial place for a minor son belongs solely to the father, and not to the heirs or parents of the deceased. Thus, this Holy Congregation decreed in the Acts of the Conventuals, in January 1870, in the case of the proposed question: "Whether it is permissible for the heirs or parents to freely choose the church for the funeral of their deceased relatives?" The response was: "No, and the intention is that, saving the right of the father to choose the burial place."

[*Latin ed. p. 690*]

Regarding the rights and privileges: "To a minor who has not reached the age of reason, it is not permitted to perform this act [of burial] either during the act of baptism, or in the immediately following act." Therefore, except for this case, no right pertains to heirs or parents of the deceased, and the deceased who has not chosen a burial place must be buried in the cemetery of the parish church. In Civita Castellana, on January 28, 1764, it was officially noted: "Regarding the matter, the only doubt arises from whether the will of the heir should be considered the will of the deceased; however, such arbitrariness may not be followed, because it is presumed that the dying person has conformed to the order of the law, and it is the law that those who have not otherwise stipulated, are to be buried in the parish churches, or in the family burial vaults." Therefore, if a member of a sodality has decreed that he should be buried in the church of the sodality, the question arises as to whether the funeral should be performed by the chaplain or by his own parish priest. In this matter, there is a resolution of the Congregation of Rites in Lauden, on August 20, 1601, reported by Bassi concerning sodalities, by virtue of which this right is granted to the territorial parish priest in the churches of sodalities, since they do not enjoy any exemption. However, by virtue of the universal prescription, the right of the parish priest is limited to those deceased who were under his jurisdiction during their lifetime, and only to those churches that are within the limits of his parish, as stated in the Decree of the City and the World, in Question X X: "Does the parish priest have the duty of performing the funeral rites over the bodies to be buried in the public churches and oratories of confraternities?" The answer was: "Affirmative, when the deceased is subject to the parish priest within whose jurisdiction the church, or oratory, is located." This dispensation is supported by the Sacred Congregation of Fabrian Funerals, on January 30, 1830 (there). "Indeed, from the law regarding burial, whether the church is secular or regular, two things follow. First, that the bodies of the deceased who have chosen a burial place beforehand, may not be taken to that place, but must be brought through

Translated by churchlatin.ai, a product of Boyne Archives

the proper parish church to the place of burial."

[*Latin ed. p. 691*]

The rights ["ius"] must be taken away, and the offices pertaining to the Church and the privileges of funerals, which the parish has customarily performed, must be transferred. The other [matter] is that all the emoluments ["emolumenta"] pertaining to the funerals of the deceased parish priest, when buried in the Church, belong to the Church. These principles are joined to other decisions of the same Congregation, in Viterbo. Regarding the parochial rights, there were doubts, which must be clarified on September 7, 1826: "3. Whether and when the bodies of the Brothers [members of a religious order] should be brought to the parish church for burial, or rather, whether they should first be taken to the parochial church for the funeral to be performed in that case. - 4. Whether and which emoluments of funerals performed in the church of S. Croce [Holy Cross] belong to the Archpriest in that case. - 5. Whether and to whom the funeral expenses pertain regarding the bodies in that case"; the response was: "Regarding the first, negatively, to the church of S. Croce. Regarding the second, affirmatively, to the parish church. - Regarding the fourth, affirmatively, only for the funeral, according to the tariff of the Diocese. - Regarding the fifth, affirmatively, and they belong to the Archpriest." Regarding the rights of funerals in Tivoli, March 17, 1827. Regarding the parochial rights in Ascoli, August 20, 1733, and the Decrees of the Congregation of Holy Rites, 3663, 4324, 4643. However, as taught by Benedict XIV, in the *Institutiones Ecclesiasticae*, number 105, even in these matters, consideration must be given to the customs of the places. Regarding the fourth doubt, it was noted that this question had been sufficiently considered in the aforementioned document from Novara, on September 24, 1818, in which, regarding the doubt: "Whether and when the parish priest is prepared to bury the bodies of poor deceased persons, or those who have been murdered, and whether he can bury them in the cemetery of the Brotherhood of the Holy Death in that case"; the response was: "Negatively." This response is perfectly in agreement with the purpose and aim of the Archsodality, and with what is established in the apostolic letters of Pope Pius VI, *Cum inter*. With these and other observations, the proposed resolutions must be considered.

[*Latin ed. p. 692*]

692. Doubts Regarding Rights and Privileges. I. Whether and in what manner the Brotherhood of the Holy Death possesses the privilege of celebrating Mass in certain cases. II. Whether the same Brotherhood possesses the privilege by which its chaplain may wear the stole outside the church during the association of the dead in certain cases. III. Whether, if heirs and parents of the deceased have so arranged, the burial of the body must take place in the church of the Brotherhood, and the funeral must be performed

Translated by churchlatin.ai, a product of Boyne Archives

by the chaplain of the same Brotherhood, so that even the parish priest himself may be prevented from entering the same church. IV. Whether the Brotherhood of the Holy Death can, at its discretion, bury the bodies of the poor and the slain, even when the parish priest is prepared to bury them.

RESOLUTION. The Holy Congregation of Bishops and Regular Canons decided on February 6, 1874, to respond as follows: To question 1: Negatively in all respects. To question 2: Affirmatively. To question 3: Heirs and relatives cannot dispose of the matter as stated. However, in the case of a canonical election of burial, the funeral rites belong to the parish priest of the deceased, provided that the church or oratory of the Brotherhood is within the boundaries of that parish; otherwise, to the chaplain of the Brotherhood, with the parish priest retaining the customary fourth offering according to the tariff of the diocese. To question 4: Negatively.

THEREFORE, IT IS UNDERSTOOD: I. In judging which privileges granted to Arch-Brotherhoods are transferred to Brotherhoods aggregated to them, the nature of those privileges must be considered; for those which pertain to the original purpose of the institution are transferred to the aggregated Brotherhoods, while those which pertain more to adornment are not.

[*Latin ed. p. 693*]

II. Concerning the formulas 693 to be examined when granting rights and privileges, the Archconfraternity granted permission, as used in the letters of aggregation.

III. The indult for a private oratory had been abrogated.

IV. Indeed, even Bishops do not possess the faculty of granting such a privilege, unless there are very important and urgent reasons; and even then, it can only be granted as an exception.

V. Among these reasons, infirmity must in no way be included, nor the time of a plague, nor the urgent need to administer the viaticum to the sick, even if the public Church is closed, and the ways to reach it are difficult and dangerous.

VI. Generally speaking, chaplains of the Confraternity may wear the stole, even outside their own church, at the association of the dead.

VII. It is permissible for the father to choose the burial place for his minor children, but not for the deceased spouse or heirs.

VIII. A deceased person who has not chosen a burial place shall be buried in the family vault, and if that does not exist, in the parish church.

IX. In the case of a canonically chosen burial place in the church of the Confraternity, the funeral shall be conducted by the parish priest, provided that the church or oratory of the Confraternity is within the limits of that parish.

X. Otherwise, it pertains to the chaplain of the same Confraternity to

Translated by churchlatin.ai, a product of Boyne Archives

conduct the funeral, reserving the fourth part of the funeral expenses for the parish priest.

XI. The Confraternity of the Dead cannot, at its own discretion, bury the bodies of the poor or those who have been murdered, whenever the parish priest is willing to do so.

[*Latin ed. p. 694*]

FROM THE HOLY CONGREGATION FOR THE COUNCIL OF TRENT, CONCERNING MARRIAGES. June 28th and August 16th, 1873. Summary of the case. A certain Anthony C., from the Diocese of L., frequently visited the town of S. Paul in the Diocese of S., for business reasons. "He began a friendship with a young woman named Anna Maria, from the family of P., and especially with Michael, to whom he declared his intention of marrying Anna Maria. The young woman gave her consent to this declaration, and offered clear and unmistakable signs of acceptance. Consequently, over time, they became mutually attached with great affection, as is shown by letters sent by Anthony to Maria. In these letters, Anthony promised that he would be her future spouse and husband, he acknowledged a ring sent by Maria, and he stated that the marriage would take place in May of the following year. Indeed, the matter progressed to the point that, transgressing the bounds of decency, Maria became pregnant and gave birth to a child. However, this affection gradually diminished, so that finally Anthony completely abandoned the young woman, and petitioned the Tribunal of L. to obtain a certificate of celibacy; this was denied. But Maria, on the other hand, presented an impediment to the same Tribunal, as they say, based on two reasons: first, the existing betrothal for marriage, since Anthony had not once, but repeatedly, promised her the hope of future marriage; and second, because she had conceived and given birth to a child through an illicit act. This document from Maria was sent by the Tribunal of L. to the aforementioned S., which ordered that the parties appear within ten days, along with witnesses, to be heard in summary. On the appointed day, Maria appeared, and when questioned about the reasons for the impediment against Anthony, she maintained that she would uphold the impediment against him, from the Diocese of C.

[*Latin ed. p. 695*]

The marriage decree 695 stated that the aforementioned man had, 1. entered into a betrothal with her, and 2. had committed a crime against her, from which she had conceived a child. She presented five witnesses to confirm her testimony, who, after taking an oath, completely confirmed everything that she had written in her document, Mary. And, from the confession of Anthony himself, four of the witnesses stated that they had learned these things from Anthony. Furthermore, three of these witnesses

Translated by churchlatin.ai, a product of Boyne Archives

testified that they had seen Anthony enter Mary's house through the window. The fifth witness, who was also the Archpriest of that region, testified that, from the words of many people, it had been discovered that the aforementioned man and the woman had already been discussing a future marriage, along with the exchange of gifts and visits with relatives. Moreover, he testified about the public rumors circulating in that region, that Anthony had often entered Mary's house through the window, and that the child born to the woman was attributed to his actions. On the other hand, Anthony presented eight witnesses in his favor, among whom was a person devoted to the service of his father. Through these, he attempted to prove two things: first, that those who had testified in favor of the woman were influenced by friendship and, especially, by concern for the good reputation of some people; second, that Mary had previously been involved with another man, Dominic M., who was imprisoned for murder, and that she had been violated by him. However, both sides presented the following statement: "Considering the testimonies presented before the court, We, who have only God and justice before us, declare that there is no proof that the betrothal between the aforementioned Anthony C. and Mary Michael P. was truly and legitimately contracted. Nevertheless, from our moral conviction, We hold that Anthony C. committed the crime, or that Mary P. suffered a violation, which occurred with the intention of marriage. Furthermore, it is clear that the crime or violation is the greatest, indeed irreparable, damage, which must be compensated for, and for which justice demands restitution."

[*Latin ed. p. 696*]

696. "Concerning marriages, especially in the present case, the matter pertains to a virtuous woman and her civil condition. This proper restoration can only be achieved primarily through marriage, and secondarily through the dowry, and through other legal remedies... In the meantime, Anthony C. has received three successive admonitions, both from his father and from his own parish priest... After these admonitions, and after two months have elapsed, if Anthony still refuses to enter into marriage with the worthy P., then the ecclesiastical censure, namely the greater excommunication, should be invoked against him, unless we are compelled to judge otherwise." Anthony received this sentence with great distress, and therefore he appealed to the Metropolitan Curia of B. However, after all legal proceedings were completed, it definitively pronounced that the sentence of the Curia of S. should be upheld in the first part only, but that in the other respects it was flawed, and therefore it declared the impediment to be of no force, and that Anthony was free from any impediment to marriage. Mary, upon being notified of this, immediately filed a formal appeal with the Sacred Congregation of the Council, along with Michael. However, after the simple appeal was completed, she did not appear again, nor did she

Translated by churchlatin.ai, a product of Boyne Archives

take any steps to have the proceedings transferred. Therefore, as the matter continued, Anthony submitted a petition to the Sacred Congregation, in which he requested documentation to prove that Mary had never appeared before the Sacred Congregation. Upon receiving this petition, the tribunal issued a letter to the Bishop of S., requesting that he provide the Sacred Congregation with the necessary information about Mary; and the Bishop responded, stating that Mary was unable to comply with the mandates of the Sacred Order due to her poverty, and that she was therefore in great distress, as she was unable to proceed further in the case. Therefore, a decree was issued in the secretariat of the Sacred Congregation, and the case was placed on the record, as indicated by the following formulas, which are at the bottom.

[*Latin ed. p. 697*]

697. A Synopsis of the Discussion Regarding Marriage. Concerning the incidental aspect of this matter, arising from the fact that Mary did not present the original documents within six months of the instituted inquiry, this was duly noted. In the articles of the Code, with the favor of Anthony, it was stated that it was doubtful whether paragraphs 960 and 970 of the Gregorian Code could apply, considering that, upon examination of paragraph 971, an inquiry instituted by a woman could not be considered concluded if the presentation of the original documents was not made within six months. Nor is it necessary to wait a year according to Canon Law, since it is evident from the documents that a year has already elapsed. However, on the other hand, it was noted that, although the cited provisions of the law are true, they are not applicable to this case due to the provision in § 383 of the same Code, which states that nothing new has been introduced with respect to the Sacred Congregations and the rules that are actually observed by them. Nor does it matter that a year has also elapsed, if Mary was unable to pursue the case due to poverty. Indeed, it is known that, among the impediments that can legitimately delay the transmission of documents for less than a year, poverty and the inability to meet the necessary expenses for the proceedings are included, as stated in Reiffenst. lib. II, decret., tit. 28 § VI, n. 168 et seq. These matters are made clear by the letters of the Bishop. With these considerations regarding the incidental aspect, the matter turned to the principal question. DEFENSE OF MARY. It was also duly noted that the marriage was validly contracted, since marriages, by their very nature and essence, require the mutual consent of the parties, as stated in I. i, ff. de promissione spons., and in can. 3, caus. 30 quaest. 3, where it is undoubtedly stated that those contracts are included which are perfected by simple consent, ff. de sponsal. As long as the consent of the parties is outwardly and clearly manifested, no other solemnity, and no

Translated by churchlatin.ai, a product of Boyne Archives

particular wording, is required.

[*Latin ed. p. 698*]

698. The conception of a marriage agreement is necessary. It makes no difference whether the contracting parties use words, or signs, or even formal or virtual words in entering into such a contract. Chapter 21 and 23 concerning betrothals. Indeed, although the Council of Trent did not fail to prescribe certain things relating to the sacrament of betrothal, it declared that the contract, which is ordered towards that sacrament, remained unchanged. The form of contracting, according to the law, was established by Pope Clement XIV, *Inst. Eccl.* 46, no. 12, December 15, 1566, from book 8, decrees, page 16. However, which words, or which signs, are to be considered suitable in particular cases for expressing such consent, depends on the prudent judgment of the judge, who, having considered the special circumstances of the case, is able to determine. Nevertheless, certain phrases, which, considering the intention of the contracting parties, seem to clearly express the promise of a future marriage without any ambiguity, and are therefore commonly accepted for establishing a betrothal. These are, in effect, considered to be of the species of the words: "I will take you," "I will lead you," "I want you to take me," "to lead me," "to marry me," as stated by Reiffenst. in book 3, Decretals, title 1, no. 30, with Sánchez and others cited by him. With these principles of law established, it is certainly not doubtful that Mary made a promise of marriage to Anthony, when in his letters he repeatedly stated that he would be her future husband until death, and that he called her his bride. Moreover, do not these words clearly indicate a promise and a reaffirmation of marriage? All the more so, it was considered to be admissible in this case, since almost all the witnesses brought by the woman testified that they had heard Anthony speaking about Mary, saying that he must marry her. If, therefore, he spontaneously expressed his intention to take her as his wife, and if the testimony of Saint Paul is taken into account, it is clear that in that region it was already known that there had been negotiations between Anthony and Mary concerning the impending marriage. To this tradition and acceptance, the matter of the ring is added, which, depending on its type, may be considered a sign.

[*Latin ed. p. 699*]

Regarding betrothals, it is held that, whenever a treatise precedes that deals simply with betrothals, mutual consent is considered to have been given, and betrothals are presumed to exist in the external forum. See Glossa in cap. Si inter j de Sponsal.; Sánchez, de Matrim., lib. i, disp. 18, n. 3; Mascard, de probat., conclus. 1024, n. 2; Menoch., lib. 3, de praesumpt., 2, n. 1; Sporer, p. 4, I, i, sect. 2, n. 18c. However, this presumption is absent if it is stated, as Anthony wrote in his letters, "The ring you sent to me is too loose for my finger; therefore, you must exchange it." But this removes

Translated by churchlatin.ai, a product of Boyne Archives

all, even the slightest, doubt concerning the value of the promise and the counter-promise, which alleviates the distress of Mary, and consequently, the conception of a child. Indeed, Anthony is influenced by the following factors: the affection of love with which he felt towards her, as well as the long-standing custom between them, by which he frequently visited her home, even at the risk of his life, and also public opinion. Public opinion, when accompanied by other supporting evidence, is considered to fully establish proof, as stated in cap. i, de appell., and also in that chapter concerning presumptions, n. 6. The Abbot's Consilia, 81, n. 1, v. 2, and even in those cases that are difficult to prove and which do not admit of witnesses, only public opinion is said to fully prove, as stated by Card., n. 66; Alex., n. 22, cons. 66. Given these premises, the signs or words, n. ç, in the Tuscan law, litt. F, conci. 66, lib. 3; Mascard, conclus., follow that the union of those betrothed is contracted, along with the presumption that mutual consent has been given in spirit; and therefore, it provides sufficient evidence in the external forum to presume the existence of betrothals, so that the accused can be compelled to enter into marriage, as stated by Sporer, part. 4, sect. 12, cap. i, n. /86; Gobât, tract. io, cons. 2, n. 6; Perez, disp. 12, sect. 3; Menoch., de praesumpt., lib. i, praes. i. Indeed, it is not likely that an honest girl would give herself to another for carnal intercourse unless there was a promise of future marriage. However, concerning the most pitiable circumstances of Mary's life, the testimony of Michael is most ample and consistent.

[*Latin ed. p. 700*]

700 Witnesses testify to the betrothal; indeed, this is confirmed by the Holy Tribunal, the Archpriest Paul, and even civil authority, so that the Holy Tribunal dismissed the exceptions presented by the man through other witnesses, and admitted the defloration on the part of Anthony. Therefore, even if there were no explicit and mutual promise of marriage, the defloration of the young woman should be considered sufficient evidence, as is taught by Reiffenstiel, Decrees, title I, on Betrothals, § 4, 11. 68, ibid. "If words or doubtful signs of betrothal are present together, then the betrothal is presumed, and is considered to have been made with the intention of marriage; or if these, along with other doubtful signs, indicate betrothal; consequently, for external purposes, this is sufficient evidence of an absolute obligation to marry, and the reason is, because it is not considered honest to presume that a girl uses her body except for her betrothed, and under the hope of a future marriage, under which hope girls are easily persuaded, even otherwise," and in n. 83. "Furthermore, just as every woman is presumed to be a virgin in external matters, so in the same matters, every woman is presumed to have been seduced by a man, knowing this." This opinion is confirmed by several decisions of the Holy Council, especially in Ripatransone concerning impediments to

Translated by churchlatin.ai, a product of Boyne Archives

betrothal, December 22, 1866, in Benevento concerning impediments to betrothal, July 27, 1867, and finally in Neritone, July 26, 1869. Therefore, from everything explained thus far, it can be concluded that betrothal existed in this case.

DEFENSE OF ANTONY. On the contrary, concerning Anthony, it was objected that clear and certain proofs are required to establish betrothal, from which it must be undoubtedly apparent that both parties have given their formal consent. Therefore, it is not enough that one party promises, but it is required that the other party also reciprocates. (Citations: Piton, Disputations, 32; Schmalz, on Betrothals; Sánchez de Betrothals, disputation 5, n. 1; Reiffenstiel, on Betrothals, book I, § 1; Holy Congregation of the Council, throughout; so that if any doubt remains concerning betrothals, it should be judged; Rota in decision 242, n. 1, S.P. 14, Recent.)

[*Latin ed. p. 701*]

701 Regarding betrothals and in Ferrara. The betrothal took place on March 18, 1748, before Bussio. Now, the proofs seem to be lacking, which are entirely necessary to prove the betrothal. For, from the testimonies presented by the female witnesses, not one mentions a mutual and deliberate promise and counter-promise of betrothal. Indeed, they testify that they heard announcements that he wished to contract marriage, although the betrothal itself was never once contracted by Anthony C. with Mary. Perhaps these intentions were present, but they do not, however, demonstrate that Anthony had already entered into a betrothal. Rota decision 182, before Lancetta, and in Tudert, regarding betrothals, June 20, 1846, before Caprara. Coscius on betrothals, of the family, Vol. 7, n. 66 to 6Q. After these matters, certain sweet words, gifts, and the giving of rings are added, as taught by the Holy Congregation of the Council in Benevento, regarding betrothals, on November 27, 1838, according to the text in chapter Tua on Betrothals. Moreover, neither does rape committed and the resulting offspring invalidate the betrothal: for, in the first place, there would be lacking the certain and preceding faith of the man in entering into marriage; and secondly, there would be lacking honesty and modesty on the part of the woman, for if she had not permitted it, it would not have been easy for Anthony to enter her room through the window. Furthermore, the fact that she had already been captivated by love weakens the case. There were also certain witnesses, such as Mary Dominic M., who, having been brought by Anthony, presented objections against some of the witnesses called by the woman, regarding whose good reputation one must doubt, if contradictory testimonies are heard, which are entirely aimed at proving that Mary's mother induced witnesses with the help of promised gifts to give testimony against Anthony C., and that he committed rape. From these, two things are undoubtedly inferred: the author of the offspring is incriminated. First, that in the absence of a prior promise, even if the author of the rape were

Translated by churchlatin.ai, a product of Boyne Archives

demonstrated to be Anthony, the only recourse for Mary would be a criminal action for the restoration of damages, but certainly not an impediment to the present judgment regarding the institution of betrothal. The second.

[*Latin ed. p. 702*]

702. The argument drawn from public reputation in this case, which is used to suggest that Anthony is guilty of rape, is of little value, so that it cannot be imputed to Anthony that he committed rape, which, as the Rota clearly demonstrated in Majorca, must be evident in order for the validity of the marriage to be questioned. Indeed, since in this case there are at least very serious indications that one party was the author of the rape and the pregnancy, no proceedings should be initiated to determine the existence of the marriage, lest Anthony be compelled to compensate for damages and to support another person's child. With these considerations in mind, the proposed questions are to be resolved. I. "Does it follow that the appeal should be upheld in this case?" And to this, the answer is negative. II. "Should the sentence of the Court B. be confirmed or overturned in this case?"

RESPONSE. The Holy Congregation, having knowledge of the case and having discussed it on June 28, 1873, decided: To the first question: Negatively. To the second question: The preceding sentences are to be reformed, with a fixed term granted to Anthony C. to marry Anne Mary Michael; after which term has elapsed, there will be a place for the payment of the dowry and for the assessment of damages by the aforementioned Ordinary, the impediment remaining firm until the child has been legally acknowledged by Anthony. This response did not please Anthony, and he requested a new hearing, which he obtained after presenting new arguments. Therefore, the question was re-proposed under the following doubts: I. "Should we adhere to, or retract from, the decisions made in the first doubt in this case?" II. "Should we adhere to, or retract from, the decisions made in the second doubt in this case?"

[*Latin ed. p. 703*]

The Sacred Congregation of the Council, after again discussing the matter on August 16, 1873, decreed that the previously given decision should stand, responding to the inquiries: Regarding the first and second [questions]. THEREFORE, IT IS DECREED: I. That to prove the existence of a betrothal, it is sufficient for one party to promise, but the promise of the other party is not necessarily required; a refusal by one of the contracting parties is not sufficient to invalidate the betrothal. II. However, this external promise, made with the solemnity of the Ordinary, cannot be subjected to the penalty of nullity, nor can it be considered a re-promise, in order to avoid scandal and the potential for harm; therefore, betrothals cannot be subjected to other solemnities than those recognized by common law.

Translated by churchlatin.ai, a product of Boyne Archives

III. The Council of Trent did not prescribe any form for betrothals made through words concerning the future; therefore, betrothals are contracted in the same manner as they were contracted before the Council of Trent. IV. Therefore, in the external forum, it is sufficient to prove the existence of a betrothal if it is established that there is a mutual agreement of the contracting parties, either through words, or through signs, or through any other means, in Pollenzo. V. However, Chapter 21 of the book "De Sponsa," which proposes a certain equality and intention to contract, is not sufficient to establish a betrothal; rather, certain proofs are required, from which it appears that both parties have given their formal consent. VI. In cases of doubt regarding the words or signs of a promise of betrothal in the external forum, the decision should be made in favor of freedom. Sacred Congregation of the Council, April 5, 1851, and March 31, 1760. VII. Except if, along with the doubtful signs, a union is present, and there is no other reason to doubt the woman's honor. VIII. The giving or receiving of rings does not necessarily constitute a promise of betrothal, unless these customs of the country truly determine a promise and a re-promise.

[*Latin ed. p. 704*]

704. Concerning Marriages, Section I, X. He who defiles a virgin is condemned by the civil law, either to marry her, or, if he refuses to marry her, he is condemned to pay a dowry assessed by the Bishop, as well as to repair the damages caused. DECREE. January 31, 1874. Summary of Facts. A parish was annexed to the Cathedral Church of N., and the duties of its members were regulated by a decree of the Bishop, dated January 25, 1838. On that day, a new parish was established under the title of St. Dominic in the Church of St. Francis of Paula, and the Cathedral administrator was appointed to it, who, by a pontifical dispensation, held the benefice for three years. After the expiration of this three-year period, he resigned both his canonical position and his parochial position before the Bishop, favoring his brother, and retained the parochial church for himself. Indeed, desiring to increase the small dowry of the parish, and to secure for himself and his successors the rights and privileges of the canons of the Cathedral, he offered the Bishop 8,000 livres, so that a canonical benefice might be established in the Cathedral, and the parish priest of St. Dominic might possess it for the time being. After certain prayers and the regular mortgage of some property, the Bishop ordered the drafting of a public instrument to establish the benefice, and he took care of its possessor; he granted him the title of Canon and Parish Priest, so that he might be distinguished from another to whom the title of Canon had been assigned. Indeed, the Bishop stated in the documents of establishment: "In our said Cathedral Church of St. Reparata, we have, with the consent of our Chapter, by this present act (March 10, 1842), deemed it fitting to canonically establish a parochial benefice with the title of St. Dominic, and by the authority of these presents,

Translated by churchlatin.ai, a product of Boyne Archives

we canonically and perpetually establish it, and declare it duly and properly established as a canonical benefice."

[*Latin ed. p. 705*]

705 The canonry, then under the same parochial title of Saint Dominic, so that the person appointed to it, as a parish priest, shall enjoy not only the office, rights, and privileges, but also the rights of a canon of our aforementioned Cathedral Church of Saint Reparata, with the title of canon and parish priest, and shall have a place and stall in the choir, and a voice in the Chapter, and shall participate in all the functions of a canon, with all the honors, duties, and rights pertaining to the canons of our Cathedral Church, and which may pertain to them in the future, except for the obligation to attend the choir whenever the duties of his parochial ministry prevent him from doing so, concerning which we remind him, as similar canons and parish priests are declared exempt by the Canon Law itself.

To us and our successors, we reserve and appropriate, without any concurrence, the public right to nominate and elect to this canonry forever, as required by the act of foundation, so that whenever, in the future, this canonry becomes vacant, whether by death or otherwise, even during any month of the year, it may be filled by us, or by the Bishop then in office, or by the Capitular Vicar, in the absence of the Bishop, without any form of concurrence, and so that all elections and canonical appointments made from the original, actual, complete, and in every way valid foundation, and in the present, shall be solid and effective, and shall produce their full and complete effects, as is best suited, which we establish and declare. After this was completed, the Bishop granted Aloysius B. canonical institution. It should be noted here that in the year 1845, the Capitular Statutes were established and confirmed by Episcopal authority, and in them, Chapter 8, concerning those to be included in the present number, Article 49 states: "Those present in the choir, and therefore participating, are, by right, entitled to the distributions, which those absent lose." (Acta, vol. VII, page 83, line 45).

[*Latin ed. p. 706*]

Canon 706: "From the choir, there will be a Canon who is the Rector of this Cathedral, and also a Canon who is the parish priest of Saint Dominic, while they perform their functions during the time of divine offices, that is to say, they administer the sacraments, assist the sick, and proclaim the word of God. On Sundays, however, they may be absent from the choir all day, when they are to preach to the people."

For many years, matters proceeded peacefully according to what had been established at that time by the Bishop and the Chapter; but after the death of the Bishop, and then of the parish priest Aloysius B., doubts arose concerning the validity of such an arrangement, which had been made

Translated by churchlatin.ai, a product of Boyne Archives

without Apostolic permission, and therefore contrary to the prescriptions of the Council of Trent, Session 24, Chapter 16, concerning Reform. Furthermore, complaints arose among the Canons, concerning the exemption of the parish priest of Saint Dominic from the choir. Finally, another difficulty arose from the government, both because the Imperial Decree by which dioceses and parishes were recognized included the parish of Saint Dominic among the subsidiary parishes, declaring its rector to be removable at will, and also because the Minister of Cults instituted measures for the separation of the canonry from the parish. Faced with all of this, the Bishop, seeking to avoid future disputes and scandals, asks:

1. Can the erection of a parish canonry of Saint Dominic within the canonical endowment of the Cathedral Church, made by the Bishop by his own authority, be maintained?

2. Does the Bishop, by his ordinary authority, have the power to dispense the Canon of the parish church from the obligation to attend the choir, whenever he exercises his pastoral ministry, and is the provision in Statute 8, section 5, which states that the aforementioned Canon, even if absent, is considered present and participates in the distribution of additions, in conformity with canon law?

3. Should the institution of a Canon of Saint Dominic be permitted, notwithstanding the civil laws and difficulties that may arise between the ecclesiastical and civil authorities concerning the pension, which constitutes a significant portion of the endowment?

[*Latin ed. p. 707*]

Canon 707. The Bishop was requested to, after hearing the Chapter, report his opinion, and to set a term for proceeding to further rights, if they wished, and he transmitted the Chapter's opinion in which it noted that the Church has always disapproved of anyone retaining two incompatible benefices simultaneously, as is clear from the Council of the Lateran Palace, and from the Council of Trent, Chapter 4, session 7, concerning Reform, to which many other responses of the Holy See agree. From this, it follows that ecclesiastical laws condemn and render invalid unions of two incompatible benefices, and that only the Pope can grant a dispensation in this regard. The exemption granted to the parish priest of St. Dominic in section 5, chapter 8 of the Capitular Statutes, concerning distributions, was intended to be of no other consequence, because those who signed it wished to testify that the Bishop had pursued his endeavors with such benevolence and devotion, while at the same time co-opting the parish priest of St. Dominic among the Canons. However, only those who are present in the choir, while exercising their ministry, are to be considered, namely those who exercise the care of souls attached to the Cathedral or Collegiate church, and not those who do so in another church. This, however, is approved by H.S.O. from Bouix, *De Capitulis*, chapter 1, section

Translated by churchlatin.ai, a product of Boyne Archives

1, and from Barbosa, *De Canon. Dignit.*, chapter 22. And all others, who, according to common law, lose distributions if they are not present in the choir, cannot be granted such a dispensation by the Bishop and Chapter. The Bishop declares that no such union has been made, firstly because it is contrary to common law, and secondly because the Bishop was subject to a dispensation granted by the Supreme Pontiff on March 4, 1815, which dispensation referred to a different benefice, and has now expired. After these matters, the Chapter, turning to the disposition of the Gallic law after the restoration, observes that no mention is made of parishes of this nature. Hence, since in Gallus a larger part of the parishes are subject to the law of removability of residence, the Bishop is obligated to consider this, but he fears that the Government will not favorably receive the erection of a parish within the canonry, which title is now...

[*Latin ed. p. 708*]

708 A canonry is visible. Furthermore, he outlines this case to himself. If a canon, being hindered by infirmity, were unable to perform his office, another would be appointed to take his place. Could a titular parson enjoy the benefits of a canonry? By no means, because it would be contrary to the law of the foundation. Hence, he concludes that: 1. There was no erection of a parish within the Cathedral canonry; 2. Neither the Bishop, nor the Chapter, could have granted to a canon a dispensation to receive distributions while engaged in ministry and absent from the choir, and therefore the dispensation granted by number 3, chapter 8, of the Chapter Statutes is invalid; 3. Attention must be given to the declaration of His Sanctity before a canonical institution is granted to the Bishop, in order to avoid any errors. Despite these considerations, the Chapter, with fervent prayers, implores His Sanctity to confirm what has been established by the Bishop and his predecessors. Hence, the proposed reason is presented under the formula of doubt written at the end. A Syriac discussion. THOSE THINGS WHICH REMAIN OPPOSED TO THE UNION. Firstly, it is noted that the Council of Trent, Session 24, chapter 13, concerning the reform of bishops, forbade the uniting of parochial churches with prebends of cathedrals or collegiate churches; for since the care of souls demands continuous and precise residence, it is easy for one to neglect the duties of the other. Therefore, Fagnanus observes that, due to the requirement of residence for service, an incompatibility arises between the benefit of a cure and a canonry, and in several chapters of the Collegiate Statutes, section on reform, the Council of Trent. Those who treat of prebends, and chapter 12, state that the Bishop cannot dispense in matters of law concerning the plurality of incompatible benefices, and they add that this can only be done by the Bishop, when there is evident advantage or utility to the Church, and when there is necessity and danger in delay, and when recourse to the Holy See is not readily available, Session 2, chapter 34, number 130. Pirhing on

Translated by churchlatin.ai, a product of Boyne Archives

prebends, etc.; Barbosa, chapter 28, idem.

[*Latin ed. p. 709*]

Canon 709. For the same reason, the dispensation granted to the parish priest of St. Dominic appears to be of no consequence, since, while he is absent from his ministry, he is considered present in the choir; indeed, according to common law, only those present are entitled to the daily distributions. The Council of Trent, Session 22, Chapter 3, concerning reforms, states that "provisions and distributions" are due to clerics who are not abstracted from their benefice. Furthermore, distributions are given by law for the work performed, as Lotherius states in *De Re Benefic.*, Book 1, question 30. Therefore, the Holy Congregation has always denied the parish priest the personal merit to obtain from the Chapter or the Bishop the faculty to remit missed distributions; Barbosa, in *ad Cap. 12, sess. 24, C. 3 de Reform*, forbade that such a thing could be established by any statute. Moreover, Barbosa continues, it cannot grant the daily distributions, even if the absence has lasted for a long time, *ibid.*, N. log. From these things, it is clearly deduced that a particular constitution cannot induce the Chapter to do this; therefore, that privilege granted by the Chapter's statute has no validity in favor of the parish priest of St. Dominic. It appears that the true opinion of the Chapter is contradicted by those who declare everything established by the Bishop to be valid.

ARGUMENTS IN FAVOR OF UPHOLDING THE UNION. It was noted that, in order to uphold the union or erection made by the Bishop, the causes for carrying it out were thoroughly investigated, and all other evidence clearly demonstrated this; the Chapter's consent was obtained through solemnities; therefore, unless the Bishop was entirely lacking in authority, his act should be upheld rather than destroyed. Furthermore, the union prohibited by Chapter 13, Session 24, of the Council of Trent, concerning reforms, is a union by virtue of which the parochial title is extinguished; which is not the case here, since the union was made to augment the parochial benefice, and not the parish to the canonry, as the Fathers of Trent express, but the canonry is added to the parish. Moreover, there is great doubt whether the true union prohibited by the Council is being considered in this case, if indeed the union presents the idea of...

[*Latin ed. p. 710*]

The canon 710 certainly prohibits the union of two pre-existing benefices, and of a pre-existing parish and benefice. But here, there is no such union; rather, to increase the splendor of the Cathedral Chapter, Aloysius B. offered to establish a new benefice, and the Bishop, in return, promised to grant the parish, which then existed, to him, so that it might become more convenient for him, with a canonry in the Cathedral, with all rights and privileges expressly stated at the time of its foundation. Therefore, this is

Translated by churchlatin.ai, a product of Boyne Archives

not a union, but the erection of a new benefice; and it does not seem a very elegant reason to say why the Bishop could not accept any conditions that the founder wished to impose on the benefice. No one may impose conditions at the time of the foundation, provided they are not contrary to good morals or impossible, and the Bishop may accept them, as is stated in Chapter 11 concerning what must be given to the Chapter, and in Chapter 23 concerning paternal rights; and in Chapter Quanto de Censibus of the Holy Congregation of Councils, dated Hortana, January 30, 1810, and Cornetana, February 6, 1847. This is based on the principle of law, that he who is the administrator and arbiter of his own affairs, can impose conditions, even contrary to common law, as the Doctors commonly teach. Pirhing, *Lib. i, Tit. 18, § 4.1*; Barbosa, *de off. et potest. Episc.*, Part i, Tit. 2, § 28; Rigant, *Comment. in Regul. 32 CaneeU.*, n. 38; De Luca, *de Benefic.*, Disc. 3, n. 10. That the conditions imposed by the founder of the canonry are contrary to the law, is not to be doubted; but for that reason, they are not to be considered impossible, or such as involve a perpetual prohibition of the law; for the Pope often grants dispensations regarding the plurality of benefices, and the Bishop formerly could do so. Indeed, Lotherius, *Lib. i, Quaest. 10 pin. de re Benef.*, openly states that, although the canons everywhere condemn the plurality of benefices, nevertheless, because it does not have a perpetual prohibition from natural law, but only from positive law, which is entirely variable in this respect, it was affirmed in the Archdiocesan Chapter of Valladolid on November 10, 1616, before Coccino, that a contrary law imposed at the time of the foundation is to be tolerated.

[*Latin ed. p. 711*]

The canonry, from which it seems one can be removed after 711 years, appears to admit of another condition, namely that the parish priest of St. Dominic, even if he does not participate in the choir, may receive distributions. For, according to Session 22, Chapter I, of the Council of Trent, concerning Reform, those holding dignities, to whom the care of souls is entrusted outside the city, and if canons who have the care of souls in the same church, while engaged in their ministry, are permitted to receive distributions, even if they do not participate in the choir, as is the case in Milan. On February 13, 163c, in Book 16 of the Decrees of Fortanen; on September 1c, 1643, in Book 2 of the same; and in Monreale on June 8, 1724, and December 6, 1712, there is no valid reason why the Bishop should not, in the case of the aforementioned St. H. O., accept the same condition from the very foundation. Indeed, he has sanctioned, and even more so, the principles involved, since, according to the law of the foundation, he considered that those absent due to studies may receive distributions; as is cited in Cornetana on February 6, 1841, and in Arbor en on April 1c, 1814. If this were not the case, those who hold this opinion could consider the conditions imposed by the Bishop to be invalid, and therefore, all that he has done

Translated by churchlatin.ai, a product of Boyne Archives

would be deemed null and void; it is therefore fitting that the dispensation, which is so earnestly requested by both the Bishop and the chapter, be granted. There are three reasons for granting this dispensation: either the utility or necessity of the church, or the prerogative of the person involved. As Pirhing states in Title de Praebendis, § 1c, and others commonly state. Here, the utility is clearly evident, since a suitable endowment is provided for the parish, the splendor of the cathedral is increased, and the danger is removed that, if otherwise, the heirs of the founder might refuse to pay the established pension, because the conditions established by the founder have been disregarded. Finally, the Bishop is concerned by the difficulty that might arise from the secular authorities, since the government has repeatedly insisted that the aforementioned parish be separated from the canonry, being unwilling to grant the parish priest a permanent and irrevocable title; especially since the French government has listed this parish among the secular or removable ones. Regarding this, it seems prudent to note that the Bishop is safe in his rightful claim, since in the province of St. and N.

[*Latin ed. p. 712*]

712 The Gallican Canonries, annexed to the Imperial domain, obligated the Government before the Holy See, that concerning ecclesiastical affairs in these provinces, nothing should be changed, and that all things should remain as they were, under the reign of [King] P. From all of the above, the following questions are to be resolved. I. Whether the action taken by the Bishop in the case is permissible. And, if not, II. Whether it is necessary to consult with the Most Holy [See] regarding a dispensation in the case. RESOLUTION: The Holy Congregation of Councils, having carefully considered all matters, decided to respond as follows. Regarding I and II, nothing should be altered, and the following is the intention: It is to be written to the Bishop that a parish cannot be conferred unless with prior consent, or at least with a prior canonical examination of suitability in writing, having given the word to the Most Holy [See]. THEREFORE, THE FOLLOWING ARE DEDUCED: I. In any union of benefices, a just and reasonable cause must be present, namely, necessity or the benefit of the Church. II. The Bishop cannot unite parish churches with monasteries, abbeys, prebends of cathedrals, or simple collegiate benefices, hospitals, or military orders. III. Nor can he grant dispensations regarding pluralities of benefices that are incompatible. IV. The founder of a benefice can, at the time of its foundation, impose any conditions that are pleasing to him, provided they are not impossible, and the Bishop must accept them. V. The conferral of parishes cannot be carried out by the Bishop unless with prior consent, or at least with a prior canonical examination of suitability in writing, notwithstanding the law of the foundation. VI. Daily distributions [of alms] are to be given only by those who participate in the Divine Office,

Translated by churchlatin.ai, a product of Boyne Archives

unless they are compelled by a legally permissible reason to be absent from the choir.

[*Latin ed. p. 713*]

Canon 713, Section VII. A canon, to whom the care of souls is attached, who is absent from the choir for the sake of ministry, shall be considered present and participating, and therefore shall receive the daily distributions. Section VIII. Neither the Chapter nor the Bishop can remit the distributions negligently omitted. REGARDING THE PARISH OF PRIVATION. On January 31, 1874. Summary of the case. The Archbishop U., S. H., informed the Metropolitan Chapter, to which he was referring, of the following matter concerning the Reverend James N., who was attached to the book: "A certain matter is observed: the elected parish priest of the parish of T., elected in the year 1866, scarcely began to administer the duties entrusted to him, and appeared to be acting with a contentious spirit; indeed, when urged by the Ordinary to observe the Venerable Decision of this Holy Congregation in the case of T. and S., he resisted so strongly that it was necessary to threaten him with suspension from divine duties, which he violated, alleging ignorance of the decree, which, however, was sealed and delivered by the Curator of the Curia, and which he unjustly rejected. "Considering the injustice of the situation, and in order to remove the danger that the parish priest N. might draw the people to his side, it did not seem prudent to inflict penalties upon him, but rather it was hoped that, if possible, the rash resistance of his obstinate mind might be overcome by kindness. After solicitations from prudent men and exhortations, urging him to consult his own conscience and to fulfill the mandates of his superior, he persisted for four months, so that it became necessary to use the severity of punishment to curb his audacity; and a decree was now prepared by which he would be suspended from his parish and curacy, not only from divine duties, but also within the term prescribed by office."

[*Latin ed. p. 714*]

714. The parish priest, seeking a more certain outcome for this matter, requested permission and, through prudent deliberation, finally submitted to his superior, promising that he would only appeal to the Holy See for the sake of his rights, which indeed could not be denied, nor had ever been denied. This reconciliation, made sincerely from the heart, appeared from the priest's reverential conduct over approximately one year. However, it soon became apparent that he was driven by a greater zeal for defending the temporal rights of the parish than for promoting the salvation of souls, and he again proceeded against his superior, whose disapproval of his actions he deemed to be based on ignorance. Thus, inflamed by his own knowledge, he publicly branded the Curia Episcopal with the mark of ignorance of the law, before both clergy and laity.

Translated by churchlatin.ai, a product of Boyne Archives

However, it happened that, through his elevated spirit and impetuousness, he offended some of the more powerful members of the community, and aroused against himself those who left nothing undone to ruin him before the civil authorities. These individuals, seizing the opportunity to accuse the parish priest, claimed that his servant, who was pregnant, had unexpectedly left his canonical residence and gone to Venice, where she was secretly giving birth. They employed every means and resource to ascertain whether she was indeed staying there. Meanwhile, the parish priest, aware of the accusations leveled against him, arranged for letters to be sent to him in Venice, denying the pregnancy of his servant. Using these letters, he wished to clear himself of the imputed crime, and not only privately, but also publicly, he defended his innocence in a speech given on a feast day to the people, vehemently and impudently attacking the malice of his adversaries, and even had this speech printed, contrary to the express will of the Vicar General.

This imprudent provocation further enraged the parish priest's adversaries, who brought the matter before the Civil Magistrate; and when the servant was found at his house after giving birth, and this became known, the Civil Authority began an investigation: they heard...

[*Latin ed. p. 715*]

The young woman, driven by poverty, was compelled to seek assistance from the parish priest. She was then summoned before the judge of her district, where she testified against him. While held in custody, she confessed her crime. Meanwhile, the parish priest, having written and acted imprudently, was accused by the civil authorities of attempting to corrupt the young woman and the midwife, or of seeking to induce them to give false testimony in court, and he was thrown into prison. After a trial, he was found guilty of the crime of seduction, or of inducing someone to give false testimony in court, and was therefore sentenced to six months in prison, and was deprived of his benefice and declared ineligible for any future ecclesiastical offices. He appealed to the Court of Cassation, but his appeal was rejected, and the original sentence was upheld. While the priest's case was being heard in the civil court, the ecclesiastical authorities were neither consulted nor heard. It seemed that they were content to remain passive, considering the division and animosity among the faithful, with some believing the priest to be truly guilty, while others considered him innocent and believed he was only being persecuted. However, based on the reasons given in the civil court's judgment, there was at least a suspicion of a serious and damaging crime committed by the priest with the young woman, although he was only condemned for the crime of seduction. Nevertheless, considering all the circumstances of the case, and especially the differing opinions of the clergy, it was deemed inadvisable to initiate a canonical process, lest the scandal be further increased. After serving his prison sentence,

Translated by churchlatin.ai, a product of Boyne Archives

the priest sought to return and take up his duties in the parish of T, but he was forbidden to do so under penalty of suspension, in order to prevent the scandal from continuing. In the meantime, a substitute vicar was sent to administer the parish, and the civil authorities assigned him a suitable stipend, the administration of which is managed by the civil authorities. Even regarding the fruits of the ecclesiastical authority, it was decided to remain passive, and the civil authorities took over.

[*Latin ed. p. 716*]

Privationis 716. The authority, insofar as it concerned the parish, was limited to ensuring the tranquility of the people and the good of souls. Indeed, the substitute vicar, informed by a zeal for the glory of God and the salvation of souls, brought peace and tranquility to the parish, calmed the passions of the people, rekindled piety, especially through the use of the sacraments, and restored order to all things. "However, this is a provisional state, which will be resolved canonically. But if the parish priest, even though he is not acting in the best interests of the parish, suggests that he should be reinstated, so that the disturbance of the people is not renewed, and perhaps a greater detriment to souls occurs; especially considering the spirit of pride and contention with which the parish priest acts, and if, with the favor of powerful worldly figures, he were civilly restored to his position, he would leave nothing undone to regain possession of the benefice. "With all of this explained as it is, the wisdom and authority of this Sacred Congregation are humbly presented with the following questions to be resolved, so that the requests may be graciously heard: "Considering that the parish priest T. has been removed from his parochial residence due to his own fault, and that his return to the residence, should it occur, would undoubtedly be detrimental to the people, especially given the serious suspicion of a crime involving a female servant: "1. After careful consideration of all matters, is it appropriate to apply to the parish priest T. the provisions established by the Most Holy Council of Trent, Session 23, chapter 1, against non-resident parish priests, and therefore to declare that he has forfeited his benefice and that the church of T. is vacant? "2. Given the injustice of the times and the extreme (indeed, insurmountable) difficulty of proceeding according to the order of law, should this norm be observed by the Ordinary? "3. I humbly request and implore this Sacred Congregation, with fervent prayers, to grant the necessary faculties to resolve this case for the greater glory of God and the salvation of souls." This suppliant letter received, the decree "Summaria precum" was issued "By..."

[*Latin ed. p. 717*]

Deprivation of the Parish 717. A Synopsis of Arguments. OBSERVATIONS FROM THE OFFICE. The rights of the parish priest, as stated in the Council of Trent, Session 23, chapter 1, are clearly held by divine law

Translated by churchlatin.ai, a product of Boyne Archives

regarding residence. It is established that the parish priest N. cannot be absent from his parish for a long time unless there is a just cause, and that such a cause must be approved by the Ordinary. A just cause can be an urgent necessity, due obedience, Christian charity, or, finally, obedience to the duties owed to the Church or to the State, and utility. Urgent necessity also includes the prohibition of the government, as taught by Lotter, in *De Re Beneficiaria*, book 3, question 2, number 112. Furthermore, it is stated that the parish priest N. was absent from his residence both by order of the government and by mandate of the Bishop. He was indeed forced to leave his parish as a punishment, and then he expiated his punishment in order to obey the Bishop. Therefore, according to the Council of Trent, in the *Dispositio Militare*, chapter 1, session 21, it is understood that the parish priest should be favored in this matter. For there are not lacking examples of parish priests who have been absent for many years without punishment, even though the parish priest was somewhat compelled. However, if he desires to return, and has a just reason to return, he should not be delayed for more than one-third of the time. For example, if he is to return to Tivoli, an indulgence should be granted. And it is certainly just: for in such cases, it seems fitting that what Saint Gregory the Great instilled in his letter to the Bishops of Gaul and Germany should be observed, namely that greater benefits and advantages result from benevolence than from severity, whenever dealing with ecclesiastical persons. Thus, his words: "Although it often happens in priests that things are reprehensible, let benevolence act more upon those to be corrected than severity, let exhortation more than threat, let pious charity more than power, since none of us lives without reproach, or without sin."

[*Latin ed. p. 718*]

718. Deprivation. And this, indeed, to a greater extent, because the animosities which are said to arise from the parish priest are, besides being those of only a few parishioners, neither just nor reasonable. For it is clear from the very report of the Bishop that some declare him innocent and persecuted, while others accuse him as guilty. Therefore, certain learned men wisely advise that, before deprivation, the Bishop should strive with all his might to bring about reconciliation. Let Garcia, on benefices, page 3, chapter 2, paragraph 179, be heard: "It is granted to Bishops to dispense, for a year, so that he may remain in another, more convenient and safer place, provided that a suitable vicar remains in the parish at the rector's expense; and in the meantime, the Bishop must take care that the animosities are extinguished; if he cannot accomplish this, he must report the matter to the Cardinals of the Congregation of Councils, whose fault it was that reconciliation did not proceed." And Gallemact uses almost the same words, in session 23, chapter 1, on reforms. However, on the other hand, it seems that this can be applied to the application of chapter 7, session 23 of the

Translated by churchlatin.ai, a product of Boyne Archives

Council of Trent. For the parish priest has been absent from his residence for a long time, and he cannot be excused, and a sentence has been issued by the civil authorities, condemning him to imprisonment for six months, and depriving him of his benefice, which is forbidden by canon law, nor has the decree of the Bishop prohibiting him from returning to his residence been observed. Indeed, it seems that he was the cause of all these things. Nor is it helpful to object that the animosities aroused in the parish priest are unjust and unreasonable. For, besides the fact that it is difficult to maintain this, it is established in law that even when these animosities are unjust, parish priests who are enemies can be removed, so that, for the sake of the good of the pastor, a great detriment is not inflicted on the entire flock. See the Holy Congregation in Bergomen, on irregular suspension and deprivation of a parish, December 3, 1863, § Attamen. For the parish priest is for the people, not the people for the parish priest. And do not say that, with an indefinite grant, a suitable vicar can be appointed to this bad council; for perpetual grants of non-residence have been abolished by the Council of Trent.

[*Latin ed. p. 719*]

Concerning the Deprivation of a Parish, Title 7, Chapter 19, Session 6, Chapter 2. If to these considerations one adds that the life of a parish priest is not commendable when he is absent, and that this absence is detrimental to the honor of the parish, it clearly appears that the provisions of Chapter 1, Session 23, of the Council of Trent can be applied to him. As for the form, it seems that the Council of Trent did not derogate from the ancient discipline concerning absent parish priests, which Innocent III established in Chapter "Ex tuae," concerning non-resident clerics, namely, that after a certain period of contumacy, and after a previously issued edict, the following should proceed: first, censure; then, sequestration; thirdly, the complete removal of the fruits; and that it is not permissible to proceed to deprivation without these steps, under pain of nullity, as widely demonstrated by de Nigro, "De vocatione beneficiis," Book 2, Chapter 3, number 6. However, there are Doctors who hold the opposite opinion, stating that it is not necessary to proceed through other penalties, namely, through ecclesiastical censures, and through sequestration and removal of the fruits, before depriving a parish priest for non-residence, but that it is permissible for the Bishop to proceed to deprivation without these penalties. Thus, Castro Palao, Book 3, "De beneficiis," Disputation 3, point 3, number 10. Thus, Flaminio, Book 1, "De resignatione beneficiis," Chapter 10, number 61. Thus, Fagnan, Chapter "Ex tuae," number 18, Volume 4. Thus, Garcias, Part 3, "De beneficiis," Chapter 2, number 13c. Reiffenstuel and others. And they teach this based on the words of the Council of Trent: "It is permissible for Ordinaries..." To which the Most Holy Congregation, consulted on the matter, responded: "That the Bishop, at his discretion, may choose

Translated by churchlatin.ai, a product of Boyne Archives

the means and the remedy he wishes to use against non-residents, namely, whether through censures, or through sequestration and removal of the fruits, or through deprivation, it is so." And this is not undeserved, since the non-resident parish priest was, by his own actions, deprived of the parochial benefice, as is clear from Chapter "Conquerente," 6, Chapter "Ex parte," 8, concerning non-resident clerics, along with other similar provisions, and especially from Chapter "Extirpandae," 30, which states: "Whoever is to be deprived..." Otherwise, the non-resident would not know that he is deprived of that (namely, the parochial church) by the authority of this decree. Therefore, it is permissible for others to freely...

[*Latin ed. p. 720*]

Concerning the Deprivation of a Parish: Furthermore, in order that someone may legitimately be deprived of a parish due to non-residence, either a single personal citation must intervene, as the Abbot advises in chapter "Ex tuae," concerning non-resident clergy, or three citations must be issued in the Church, provided that six months must elapse from the final day, as stated in chapter "Ex tuae," Abbot's counsel, number 67, section 2, book 1. Thus, Barbosa writes in "Collectanea Doctoris," concerning the Council of Trent, session 23, chapter 1, paragraph 73. And Gerald, in his exposition of canon law, part 2, session 88, states: "And with regard to the deprivation of a parish for 'omission of residence' on August 26, 1621, it was judged that the Bishop could proceed against the parish priest, even if the latter were absent, for the deprivation, provided that three public edicts had preceded this, and six months had elapsed, according to the decree of Innocent III, which begins with 'Ex Constitutionis ad tuae.'" However, only he who possesses supreme authority could dispense from these formalities, which proceed according to law. Rescript. After examining these matters from various perspectives, the Sacred Congregation of the Council responded on January 31, 1874: "It should be written to the Archbishop, with the intention of inducing the parish priest to resign, with a suitable pension, or some other provision to be determined by the same Archbishop; otherwise, it is not possible to proceed with the deprivation of the parish due to involuntary non-residence, but only for a canonical reason, at least in a summary manner."

THEREFORE, THE FOLLOWING MAY BE GLEANED:

I. Parish priests cannot be absent from their residence except for a reason permitted by law and approved by the Ordinary.

II. A Bishop cannot proceed with the deprivation of a parish due to involuntary non-residence, but only for a canonical reason, at least in a

Translated by churchlatin.ai, a product of Boyne Archives

summary manner.

[*Latin ed. p. 721*]

Regarding the Rights of Rights. On February 28, 1874, 721 CANONICAL LAWS. Compendium of Facts. Alexander III, in the Third Lateran Council, Canon 18, most wisely decreed that in each Cathedral Church, a master should be established "who would teach the clergy of the Church and poor students free of charge." This provision was renewed and expanded by Innocent III in the Fourth Lateran Council, in the year 1215, decreeing that each Cathedral, and other churches with suitable revenues, should establish a master who would teach grammar; and that the metropolitan churches should teach sacred doctrine. "Furthermore, Leo X, in the Fifth Lateran Council, in the year 1516, session 16, extended this institution to all Cathedrals." Finally, the Council of Trent, with the greatest care, in session 5, chapter 1, "lest that heavenly treasure of sacred books, which the Holy Spirit has so generously given to men, should be neglected," decreed many things, most piously and wisely. However, although the Council of Trent established the best and most salutary decrees, so that a canon would exist in each Cathedral Church, specifically to explain the Sacred Scriptures, this had not yet been fulfilled in the Church until the year 1731. Therefore, the Bishop, after the Roman Council held under Benedict XIII, and after the Constitution issued by him, in order to expedite the execution of the decrees of the Council of Trent, and in order to address the office dispute, erected one of the six canonries of the Cathedral of Massa, which was then vacant, into a Theological canonry, according to the laws. However, in the year 1774, when Cardinal E. was Bishop at that time, the provisions of both Councils, and the Constitution, which had not been fully implemented, were examined, *Acta*, volume VII, page LXXXIII. Hence, a new... 46

[*Latin ed. p. 722*]

The 722nd canon established a separate theological canonry, enriching it entirely with its own patrimonial goods, adding to it certain endowments, and according to the conditions by which the rights and duties of the same possessor are determined. It states in the Bull: "The canonry, and the endowment, which We grant, must be conferred in a single act upon a presbyter, who shall be designated Master of Sacred Theology, and who shall be designated Cathedral Canon Theologian, who shall publicly read the Sacred Scriptures in the same church, from the pulpit, on the days prescribed by Us, for the promulgation of the written word of God, for the instruction of the clergy and the people, with Our full authority, and for the accurate execution of both Councils, and of the aforementioned Constitution, with the following conditions and exemptions, which We establish and institute, and We add and incorporate this canonry and endowment to the number of other canonries of the same Cathedral Church: furthermore, We declare

Translated by churchlatin.ai, a product of Boyne Archives

that the new theological canonry, for the time being, shall possess a stall in the choir, next to the altar, and shall enjoy the common insignia, and other privileges granted to the other canons of the same Cathedral Church by the Holy See." Regarding the goods by which this canonry is enriched, it adds: "The theological canon shall be content with this revenue, and, just as he shall not be able to participate in the revenues of the Chapter Table, or in the distributions of alms, or in uncertain or certain sums for funeral Masses, or for saints, or for other extraordinary expenses, so likewise he shall not be obliged to pay any sum, nor to make any significant composition of annual scutages, which are customarily paid by the canons of the second foundation." Then, in the same act, this Angelic Canon was granted these words: "We also declare expressly that the canonry, which has hitherto been theological, which the beloved Angel, by the force of collation, has held, with the strict concurrence previously obtained on September 7, 1770..."

[*Latin ed. p. 723*]

"Regarding the canonical rights, 723: 'He shall possess the rights granted to him by us according to the form of this Constitution, after the erection and foundation of such a canonry, whatever the circumstance.' However, the Theological Canonry is entirely devoid of such rights, and a Theological Canonry will soon be erected for the aforementioned Angel, by right, having previously earned it through merit, and because of the gifts of his mind, his prudence, and his knowledge, with which he fulfills the duties entrusted to him, and especially the exposition of Holy Scripture, we, by the full force of these letters, grant it to him completely, and we also provide for him. Therefore, we command our beloved Chapter and Canons of this Cathedral Church, in Christ, to receive him according to custom, and to allow him to enjoy all rights, privileges, and honors, along with all other Canons, and those rights which he has hitherto enjoyed as a Canon. Indeed, Canon Angel C. enjoyed all those rights and honors until the year 1809, as did his successors, Canons F. and B., who held the position from the year 1814 to 1823. However, at that time, the assets of that prebend had been completely lost, and therefore it could no longer be conferred. Therefore, Cardinal C., then Bishop, again granted him the canonry of Massa, supplementing the aforementioned canonry, which was always and in the manner in which it is now vacant, so that, from our collation and whenever it pertains to Massa, and to our successors according to the law of the foundation, the Theological Canonry shall be provided until and insofar as the assets of the Theological Canonry are recovered by the Bishop E. We erect and establish it.' Such was the situation until the year 1870, when, with the Theological Canonry and the prebend conferred, Canon M. possessed the Theological Canonry in the year 1774, having completed the public claim of the prebend of Massa, and was appointed in the place of the former. But on

Translated by churchlatin.ai, a product of Boyne Archives

that very day, as he entered into possession, a question arose, concerning certain clauses in the Bulla."

[*Latin ed. p. 724*]

The Canonici, upon receiving the 724 canonical privileges, declared in the very act of possession: "That they desire to recognize no other burdens or rights in this theological prebend, except those expressly stated to the possessors in the Bull of erection." Subsequently, on January 24, 1871, they presented themselves before the Most Holy Prince, stating "that although the pious founder, in the aforementioned Bull of erection, prohibited the theological Canon from participating in the revenues of daily Mass and the Capitular Mass, the distribution of uncertain or certain funds for funeral Masses or for the feasts of saints, and although initially only the Canon C. was invested with the dignity, due to the merits of all his personal qualities and individual rights, granting him a privilege belonging to other capitulars, among which that of participating in the capitular sessions certainly stands out; nevertheless, his successors have abusively attended all sessions; therefore, they earnestly implore that the question be resolved, 'whether the same theological Canon has the right to attend the capitular sessions.'"

Upon receiving such a petition in writing for information and a vote, the Chapter was heard, and it reported on the good right of the Chapter, with the necessary formalities. The Most Reverend Bishop, on August 10th, was with the Most Reverend Bishop and the Canon, and, as documents pertaining to the matter were sent to H. S. C. according to custom, on August 18, 1871, he sent letters to the parties involved, although he did not yet reveal his opinion.

With these matters before him, the case was proposed under the following formula for deliberation:

A Synopsis of the Arguments.

THINGS ADVANCING THE CAUSE OF THE CANONICI.

The Canonici maintain their own thesis. In the Decree of erection, the founding Bishop stated: "Furthermore, we declare that the new theological Canon, for the time being, holding a stall in the choir, next to the altar, and endowed with the same insignia as the other canons of the same cathedral church, granted by the Holy See, should enjoy..." Then, proceeding to the nomination of Canon C., he adds, "himself."

[*Latin ed. p. 725*]

By reason of the endowments of his soul, his canonical prudence, and his knowledge, he ought to enjoy not only the stall, but also all other privileges pertaining to the canons, individually. However, if the pious founder had

Translated by churchlatin.ai, a product of Boyne Archives

intended that all these privileges should belong to the theological canon, he would have mentioned them in the very decree of the foundation, and not in the nomination that follows the decree. Therefore, such a concession is a personal privilege, which is extinguished with the person. And indeed, before he founded the theological canon, he had established three other canons, and in the decree of their foundation, he expressly declared that their possessors should enjoy all the privileges that belong to the other canons. Why, then, did he not act in this way in this last foundation? Certainly, because he granted some personal privilege to the canon, which would not pass on to his successors. It is not the case that the two other successors of C. have enjoyed these rights, since they have used them for only nine years, which is insufficient. If, as a real right, the theological canon has the right to participate in the capitular assemblies, it is certain that it is not permissible for him to enjoy this right in those sessions in which administrative matters are discussed, since it is expressly forbidden in the letters of the erection of the canonical theology to have any participation in the capitular assembly, or in the distribution of revenues, or in the daily and uncertain distributions.

What remains in favor of the canonical theologian is the statement of Canon Angelus C., who says that it is absurd to remove the canonical theologian, who is one of the principal canons in any chapter, from the capitular assemblies after almost one hundred years, during which his predecessors enjoyed this right, and during which he himself still enjoys it.

The canons who deny the theologian the right to participate in the capitular assemblies argue that the privilege granted to Angelus C. is contained only in the bull of the erection of the canonical theology, to whom this benefit was originally granted. Before responding directly to this gratuitous assertion, it must be noted that the nature of the canonical theology...

[*Latin ed. p. 726*]

726 The canonical rights of any Cathedral Church differ greatly from the nature of other canonries; for while other canonries are established in some way, they require the approval of the chapter and the sanction of the Bishop concerning those matters pertaining to their rights, both with regard to the chapter's existence, which has no power to prevent the erection of a theological canonry, nor to interfere with its rights, nor with regard to the rights granted to it; nor does the Bishop, in the Bull of possession of a theological canonry, grant these rights to it, but rather declares them. The reason is that the Church, and the Roman Pontiffs, are the founders of all Cathedral theological canonries, because they have decreed that a theological canonry should be established in every Cathedral Church, and therefore every theological canonry exists in law, even before it is actually established. But since the participation in chapter elections is one of the principal rights of canons, it follows that every theological canon possesses

Translated by churchlatin.ai, a product of Boyne Archives

this right independently of the chapter. Having explained this, we directly address their objections. The opponents say, that all the rights of a theological canon, about which we are speaking in the Bull of Institution granted by Cardinal Erño, the Bishop, on May 30, 1774, are privileges granted to the Canon, C., in consideration of his merits, as is mentioned specifically in that Bull; but have they indeed gathered this idea of a privilege? In the Bull, not a single word is mentioned of a privilege: forty-seven years the canonry existed until it was suspended, and no canon, who flourished during those times with outstanding piety, prudence, and doctrine, ever suspected this privilege. Nor does it help to point out that the Cardinal Bishop, the founder of that canonry, openly confessed, in words, that he was induced to confer it in consideration of the merits of C.; for certain phrases, which are used by those who confer a canonry on the Lord C., concerning the merits of C., are used by almost all who confer benefits, for this purpose, so that all to whom it pertains may know that the person to whom the benefit is granted possesses those qualities, and that the benefit is conferred because of them, for honor.

[*Latin ed. p. 727*]

The 727 Canon Laws demand that Beneficiaries be informed [of their rights]. Therefore, the merits of the Beneficiaries, and those matters which pertain to the common [aspects] of the granting of [benefices], which are contained in the aforementioned Bull, are usually extended to their successors. However, in all grants, mention is made of the merits of the Beneficiaries. Furthermore, the opponents lie to themselves, and fall into open contradiction. For, while they acknowledge in the Bull that the canonical rights of Theologians are common and the same as those of other canons, they immediately call this a privilege, tearing away a certain proposition from the context of the same Bull, and applying it to their own true participation in the institution contained in the Bull, etc., thus distorting the meaning. And these words are found: "Nothing refers to the right of distribution and uncertain [matters], from which the Theologian is excluded." The opponents, on the other hand, extend the same [words] to all rights about which there is a question. The assumption of the opponents is that the Canon [in question] does not enjoy the rights of others; for these two words are found most inappropriately in the Bull, granted to him by the Founder. Therefore, to what extent have they toiled thus far, in order to show that the Canon was pleased with the canonical rights granted to him by privilege, in consideration of his merits? But they themselves present the clearest loss of their own cause, and, like shipwrecked men, they cling to planks, hoping at least to find refuge, if indeed the Canon M. implores them in certain cases, in which the matter concerns the proper interest of the other canons. This exception unjustly harms the Canon Theologian; it weakens him; and moreover, he has suffered a certain exclusion, which no

Translated by churchlatin.ai, a product of Boyne Archives

one among his predecessors has ever suffered. Finally, it is observed that the Beneficiaries do not actually possess direct dominion over ecclesiastical goods, but rather the Church possesses them; if, therefore, the matter concerns these goods, what canonical right is there to exclude the Theologian? If, on the other hand, the matter concerns the proper goods of the canons, it is omitted that they themselves could not constitute [a right].

[*Latin ed. p. 728*]

Concerning Canon 728, which pertains to canonical elections, the question arises: can a canonical theologian participate with his colleagues in such deliberations? The example of the canons of Massa, who exclusively administer their own goods, is not relevant to this matter, but rather suggests the contrary; for this is a certain exception that confirms the rule in the opposite direction: for the aforementioned canons of Massa possess this right by a privilege contained in the capitular constitutions by which the cathedral church is governed. The canons of Massa formerly constituted solely the chapter. Furthermore, these same canons of Massa, all and each without any controversy, have always participated in, and do participate in, the capitular assemblies, even when the matter concerns the goods of the other canons; and this is the question upon which the present discussion turns.

OBSERVATIONS FROM OFFICIAL SOURCES. From what has been presented above, it is added, by official authority, that newly established canons possess all rights and privileges equal to those of other canons. Scarfi, in *Ad Ceccoperi*, L. I, C. XIV, n. 13 (there), writes: "When new canons are truly and properly such, and constitute one body representing the Church, they should not be distinguished from the other members of that body, but should, in a certain way, participate in the acceptance of all canonical rights and privileges, just as the ancient canons did. This, of course, applies even if the service to be rendered by the new canons is different and less than that rendered by the ancient canons." Barbosa adds this in *Summ. Apost. Decis. Collect.* 87, n. 3; *De Luc.*, discept. 6, n. 12, concerning canons; the *Rota* in *Bononien. Aggregationis*, July 31, 1646, § I; these words in *Novarien.*, June 20, 1681, §, with Ursino present. Nor does Tignateli state otherwise in *T. VI Consult.* 48, n. 8, "For, it is considered a constant principle that newly established canons are true canons, and therefore they perfectly acquire all canonical rights, according to Abb. in *Cap. Cum dilectus*, n. 7, *de Praeb.*, and ibid., Felin., n. 23, which were approved by the *Rota dec.*, n. 8, before Cavalerio, and therefore they have a voice in the chapter." The reason.

[*Latin ed. p. 729*]

Canon 729 states that "a canon is nothing other than a spiritual power within the Church, by which right a place in the choir is granted for divine

Translated by churchlatin.ai, a product of Boyne Archives

services and other matters that must be done in the Chapter," as Fagnan states in *Capitula*, chapter 23. Furthermore, M. Ferrarius, numbers 23 and 26, and Barbosa in *Collectanea*, number 18, and in *De Canonie et Dignitatibus*, page 13, number 1, all agree that, consequently, as soon as someone obtains a canonry, they have a voice in the Chapter. According to the Doctors in *Capitula Cum Dilectus de Praebendis*, Dist. 2, question 4, number 13, Lotter in *De Re Beneficiaria*, Book 1, chapter 19, number 3. Moreover, the Holy Council Congregation in Senogall, February 23, 1617, as reported by Aldano in *Compendium Resolutionum Canonicarum*, Volume 2, number 2, and Barbosa in *Summarium Apostolicae Discipulorum*, number 8f, number 3, state that these canons must enjoy all honors and privileges without any difference whatsoever from the ancient canons, as stated in Feretrum, February 1644, and concerning equal thurification, the Holy Ritual Congregation in Regien, June 8, 1632. Nor is it otherwise established concerning the right of active and passive voice in the Chapter, as Scarf states in *De Canonicis*, chapter 1, number 33.

It is objected that, by increasing the number of canons with new revenues, even though the interest of the ancient canons is not touched, a considerable prejudice is nevertheless caused to the jurisdiction, because, in accordance with the law of canons, new canons acquire the right to give their votes in elections and in other acts of the Chapter, and consequently, the jurisdiction of the Chapter is extended to more people, because this prejudice is not considered, nor is it taken into account in the context of the benefit of the Church, which is considered in the greater number of canons and advisors. The Rota, before Achill, in *Decreta de Grossis*, number 1, concerning those things that are done by the majority of the Chapter, and before Coccin, in *Decreta*, number 2902, number 18, also state that it is proper that this prejudice is not taken into account, in which the favor of the Church and the increase of divine worship prevail. The Rota, before Mantua, in *Decreta*, number 131, at the end, and before Seraph, in *Decreta*, number 847, number 3, and Pignatel, Book 1, number 10.

Regarding the voice in the Chapter, there can be no doubt. If it belongs to Coadjutors, who are not truly...

[*Latin ed. p. 730*]

730 Concerning Canonical Rights: "Canonical rights are canonical, but fictitious," as stated by Gonzalvo in *Ad Regulas*, 8, Gloss, n. 3, § c, n. 101 and following, and by the Rota in Salamanca concerning the Coadjutor, July 1, 1594, "cor." The penalty is more strictly due to newly established canons, "who are truly and properly canons." However, all Doctors agree that some limitation should be added to these rights. Scarfi, I, c., n. 57 states: "It must, however, be observed that the admission of new canons with full canonical rights, and with a voice in the chapter, applies only to chapter matters, which concern the status and service of the Church and the sacristy, such

Translated by churchlatin.ai, a product of Boyne Archives

as the elections of chaplains and other ministers and officials of the Church and sacristy, so that the superintendence of the Church and sacristy is simultaneous with the new and old canons, as they together constitute one moral body to which the care and proper governance of the Church pertain," as stated by Fognani in *Commentaria in Codicem*, I, n. 26, concerning Prebends. De Luca, *De Canonibus*, Discourse 6, n. 12. Burati, *Decreta*, 159, n. 3 and 4 and 11. Novarien Aggregation, July 12, 1682, "cor." Ursino. For with respect to the appointment of officials administering particular revenues, the ancient canons, as a mass, regarding the distribution thereof or other rights not pertaining to the status of the Church, but to their particular affairs, the aggregation and admission of new canons does not apply; but they cannot interfere in these matters. The Rota in Novarien Aggregation states: "Therefore, if emoluments and salaries for said officials of the Church or sacristy were paid from the revenues of the Church and sacristy, to that extent, new canons would be admitted to cast votes in the elections of said officials, insofar as they also contribute to the stipends. For if they wished to exempt themselves from the burden of payment, they would also be excluded from the act of election, just as new canons are admitted to the privileges and canonical rights, they must also undergo the disadvantages, as all equity suggests," as stated by Calderini, *Consilia*, 21, at the end, concerning Prebends. Tonduti, *Quaestiones de Beneficiis*, c. 68, n. 16 and following, p. 1. Rota Novarien, July 21, 1862, § "the manner is..."

[*Latin ed. p. 731*]

"And these are the Sacred Decrees, 'May 17, 1707.' The Congregation of Arezzo, having examined the matter, has approved the following regarding new canons and others: This Holy Congregation declares that canons, by their very nature, possess canonical rights, both in active and passive voice, with respect to matters concerning their interests and particular rights, as pertaining to the ancient canons. Thus, in Eugubina, Canon. Erect. March 26, 1763, question 4; in Tolentinata, Archpresbyter, February 17, 1766, question 3; in Pisana, December 5, 1846; and in Veliterna, December 20, 1851. Among other things, the following question was proposed: 'Do canons of a second erection have the right to participate in chapter sessions, and do they enjoy the active and passive voice in such cases?' The response was: 'Affirmatively, in all respects, except those pertaining to the interests and particular rights of the ancient canons.' It does not seem that a canon lawyer can be aided by the principle of prescription in this matter. Since, apart from the years in which a similar position was vacant due to lost property, the required time for prescription appears to be lacking. Indeed, both Canon F. and Canon B. enjoyed the benefice, as appears from the records, from July 26, 1814, until March 15, 1823; thus, not even nine years have elapsed, and therefore, no prescription is applicable. Nor can one say that the principle of prescription can be invoked, even presumptively,

Translated by churchlatin.ai, a product of Boyne Archives

in such a case, because from this it easily follows that, if it is presumed that Canon M. and Canon C. understood the aforementioned clauses, then this difficulty vanishes, since it would be understood that Canons P. and B. were not endowed with the rights, honors, and privileges of the other canons except by abuse. With these and other considerations, the matter is to be resolved."

[*Latin ed. p. 732*]

Concerning Canon 732 of the Canons, a Doubt. Whether and in which sessions of the Chapter a Canon Theologian has the right to speak. RESOLUTION. The Congregation of the Council, having maturely considered the matter, responded: Affirmative in all matters, except those concerning the interests and particular rights of the ancient canons. CONSEQUENTLY, IT IS UNDERSTOOD: I. That canons of the second foundation should not be distinguished from the other members of the same body, but should participate in all canonical rights and privileges, just like the ancient canons. II. And this applies even if the service to be rendered, according to the testator's disposition, is different and unequal from that rendered by the ancient canons. III. Hence, the right to give their votes belongs to them in elections and other acts of the Chapter concerning the status and service of the Church and the Sacristy, but not in those concerning the interests and particular rights of the ancient canons. ON THE DAY OF PENSIONS, OR FEBRUARY 28, 1874. Summary of the Case. OF PROVISIONS. Bursius, Lucius, and Bertrand R. legally enjoyed the patronage over the parochial and abbatial church of Saints Nicholas and Agatha in a certain town of the Diocese of B. To meet their own needs, they obtained an annual pension of one hundred scudi, to be divided proportionally, for a period of ten years, by Apostolic Letters dated March 29, in the year 1843. However, through the death of Mr. Peter F., who at that time was designated by them,

[*Latin ed. p. 733*]

On the thirteenth of March of the year 1870, the parish was lacking seventy-three hundred in its pension or sustenance fund. Consequently, since Bursius and Lucius had passed away, on the eighth of June of the same year, Joseph C., as the procurator of Bertrandi, appeared before the Archdiocesan Curia, and appointed the priest, John R., to the aforementioned church. This priest declared that he accepted the appointment, even though providing the parish would burden him with a pension, for which he had already learned that a petition had been submitted to the Holy See. By virtue of this appointment, John R. was admitted into possession of the aforementioned abbey on the twelfth of August of the same year, without any mention being made in the Constituting Bulls concerning Bertrandi's prayers presented to the Most Holy See, nor concerning the acceptance of the institute by the priest.

Translated by churchlatin.ai, a product of Boyne Archives

Since the outcome of Bertrandi's prayers presented to the Holy See was unknown, and indeed, where and when they had been presented remained shrouded in obscurity, he sent a petition to the Holy Office on the twenty-seventh of September of 1872, demanding an annual pension of six hundred livres, stating that he was in dire need. These prayers were immediately transmitted to the Most Reverend Archbishop for information and consideration, and those interested were heard, who, acting in the manner of the Holy Office, reported on the twenty-fourth of February as follows: "The prayers of Mr. Bertrandi R., patron of the abbatial benefice of Saint Nicholas in this diocese, which I submit, are entirely true. However, having heard those interested and all those concerned, it has become clear that the patron is living a miserable life in his advanced age and with poor health, and that he has, as stated in the prayers, received an annual pension of one hundred Roman scudi. Regarding the current abbot, who has acquired possession of the goods with the reservation made, and having accepted the pension imposed by the patron, as already stated in the prayers previously submitted to the Most Blessed Father, he, the abbot, presented reasons why not everything requested should be granted, and showed the revenues and burdens of this abbey, so that, in addition to the obligation, he should "also see that the beneficiary may also provide alms spontaneously among the burdens of the dowry for the poor."

[*Latin ed. p. 734*]

734 He noted the need for provisions, or sustenance, "shops, as well as provisions and a horse for his convenience," in addition to other things, as can be seen. Having carefully considered all these matters, and taking into account the special circumstances of the speaker's advanced age, and not only his poverty, but his true misery, and with respect to him, who is also endowed with religious virtues, I humbly believe that an annual pension of five hundred, rather than six hundred, as requested, could be granted, until he lives; however, this benevolent concession by the patron should in no way hinder prayers in cases of reassessment and expediting [matters], of the inhabitants living near the Church of St. Mary, who demand the dismemberment of this part of the parish in order to erect a new one, regarding which a reservation has already been made and accepted by the current Abbot in the Bull of the canonical Institution. With these matters in mind, a decree was issued to put the case on record, and the following question was proposed for consideration: A Synopsis of the Discussion. THE RIGHTS OF THE PARISH PRIESTS OF SS. NICOLAI AND AGATHAE. The parish priest, stating that the speaker is truly lacking in fixed income and is in misery, and in need of assistance, especially due to his advanced age, exceeding eighty years, points out that there exist several patrons for the benefices, and therefore adds, either he himself already enjoys a pension from other benefices, and in that case this must be taken into account when

Translated by churchlatin.ai, a product of Boyne Archives

determining the pension from the Abbey; or he does not enjoy it, and in that case, all the beneficiaries must contribute proportionally to alleviate his poverty, so that the entire burden is not borne by the benefice from which he benefits. He then continues, saying that when determining the pension, not only the patron's poverty must be considered, but also the income of the benefice, provided that it is sufficiently known, and therefore he presents the active and passive state of his parish, from which it appears that the active assets consist of 5861 pounds and 98 pence, while the passive liabilities consist of 5659 pounds.

[*Latin ed. p. 735*]

The pension, or 735 rations, and 100, absorb: from which, after deducting these amounts from the total, only 202 and 56 remain for the Parish Priest, and therefore, it is argued, a very small pension can be imposed. On the other hand, nothing was deducted from Bertrand's share, if the restriction of prayers is limited to 100 annually. THOSE THINGS WHICH ARE ADDED BY OFFICE. To support the rights of the Parish Priest, it was noted that nothing can be granted to Bertrand, neither in virtue of the pension reserved for him, nor under the title of sustenance. Indeed, he cannot obtain anything under the title of the pension reserved for him, since not even a word is mentioned about it in the founding documents; therefore, it certainly seems just that he should be not burdened with any obligation. For it is foreign to the canons and practice of the Church for a pension to be taxed on a benefice when it is fully endowed. But it was also noted that nothing can be granted to him under the title of sustenance, since, according to the prescription of the Sacred Canons, especially from chapter *Nobis de Iurepatr.*, the patronage alone does not suffice to admit an action for sustenance, unless two things are verified: namely, that the patron is in true and real need, and that there is such an abundance of income in the benefice, that after deducting the expenses, there remains a sum sufficient for the patron in the case of sustenance, as the cited chapter extensively states. The Sacred Rota, in the case of *Salernitana alimentorum* of January 11, 1712, cor. Scotto § 2, agrees with this, as does Vivian, *prax. Iurisp.*, book 1, chapter 2, n. 20. When it is understood that the income of the benefice remains, Vivian, *loc. cit.*, and Barbos, *Ius. Eccles, univers.*, book 3, on patronage, chapter 12, n. 217, Surd. on sustenance, title 7, question 32, n. 2, and Piton, on controversies concerning patronage, allegation 44, n. 20, state: "First, that part of the income should be left to the Rector, or the beneficiary, from the same income, as much as he can conveniently live on; and second, that another part of the income should be left sufficient for the necessary expenses of the Church, as is stated in Lambertin, *de iurep.*, book 3, question 3, article 3, n. 1, n. 7, End, and n. 8... After these deductions, whatever remains is to be assigned for the sustenance of the patron." And Ferraris, *Biblioth. verb. luspatr.*, article 4,

Translated by churchlatin.ai, a product of Boyne Archives

n. 126, states: "First..."

[*Latin ed. p. 736*]

In lieu of a pension of 736 or sustenance, and above all, the Church, or the beneficiary, must provide for its own needs, and for divine worship, and then, if there remain, beyond what is necessary for its proper and honorable support, and for the repair and maintenance of the Church or benefice, it must contribute to the patron. In these matters, the law preceding must be considered regarding the poverty of the patron; but since it appears doubtful whether, according to Fagnan, *de non possit*, and according to *Iurep.*, volume i, part i, canon 3, section i, and *Surd.*, *de alim.*, title 7, question 26, number 11, he has been brought to that state without his own fault, so that he may seek sustenance from the Church's goods, which is not apparent. But even if this is conceded, the request for the payment of five hundred livres annually must be restricted, since the surplus of the benefice's income does not seem to be verified in that amount. Therefore, Bertrand's requests, whether under the title of a pension, for its restoration, or at least for its moderation, must be considered. It is not helpful to object that the Archbishop's opinion, which the Sacred Congregation in *Camerinen. Capellaniae* 20 December 1834, §, advises should be followed in these cases, is that the patron should be assisted. To be noted: from the state of the benefice at that time, the assets exceeded the liabilities by 2350 livres and 26 centimes, but from a more accurate account of the subsequent state of the benefice, the assets exceed the liabilities by only 202 livres and 56 centimes, this difference arising from the fact that in the previous state of the benefice, more liabilities were either reduced or omitted.

SECONDLY, the patron, Bertrand, has objected to the amount requested being accepted in his favor, whether under the title of a pension reserved by him, or under the title of sustenance, and indeed under the title of a pension, because the actual abbot was already aware of Bertrand's requests during the presentation, and accepted the parish even if it involved a pension; therefore, the faith given by him must be observed, *L. Pactum iy, Cod. de pactis*. But whatever may be the case regarding the title of a pension, it is evident from canon 38 of the Council of Trent, from *Tolet.* IV, cause 16, question 7, and from chapter 23 of *Iurep.*, that the pious Church provides for its patrons, and for their...

[*Latin ed. p. 737*]

He shall provide sustenance to the children, granting them support from the revenues, lest they fall into poverty; thus, all Canonists express this in the general definition of patronage, commonly saying that patronage is a burdensome and useful right pertaining to the Church, burdensome because the Patron has the duty of defending the Church, and useful because he has the right to provide sustenance. Therefore, among the Canon-

Translated by churchlatin.ai, a product of Boyne Archives

ists, the verse quoted by Hostiensis in the chapter cited above, "there," is well known: "To the Patron is due honor, duty, and emolument; let him present, preside, defend, and provide for the needy." But this does not only arise from law, but also from the constant practice of the Holy See, which has aided those in need in the best way possible, sometimes through the administration of a benefice, sometimes through the suspension of a nomination, and sometimes finally through the reduction of obligations, as is evident in Taurinen, March 17, 1776; Terrarien, Reduction of Masses, February 22, 1793; January, concerning Chaplaincies, August 21, 1819; Sorana, Suspension of Nomination, December 3, 1831; § Indeed, in Camerinen, December 20, 1634; it is clearly established that those in need have not only received aid from vacant benefices, but also from the benefice themselves, as in Camerinen, Canonicatus, September 3, 1847; § However, in the matter of the Velite Subsidium, December 17, 1833, § it is not only the case that such generosity has been granted when absolute poverty has been established, but also when Patrons have been seen to be afflicted by relative poverty, as is frequently demonstrated by the responses of the same Holy Order, as in Asculana, Dispensation, May 20, 1786; Aquen, concerning a Major Benefice, June 27, 1829; concerning Chaplaincies, February 3, 1687; Montis, concerning Chaplaincies, March 13, 1819, and many others. As for Bertrand's poverty, it is not to be doubted that it was absolute, as the most excellent testimony of the Prelate cited above suggests. For he says that such assistance is due to him, given the special reason of his extreme old age, and not only poverty, but true misery in which the Orator finds himself; nor does the opponent himself deny this. Furthermore, it seems to be demonstrated from the Acts, volume VII, page LXXXIII, that this was not due to his own fault.

[*Latin ed. p. 738*]

The request for 738 florins, or for sustenance, made and granted by Gregory XVI to the Rector, along with his brothers, and also from the silence observed by the Archbishop in this matter, and from the taciturnity of the very adversary himself. Indeed, when the Eminent Prelate commends him, so that he may be granted this favor, because a man of such prodigality is to be presumed to possess good morals, why should his prayers not be entirely heard? However, the Parish Priest opposed, claiming insufficient revenues of the benefice. But who would easily believe that from such a substantial benefice, a small sum of five hundred florins could not be deducted annually? Indeed, according to the testimony of the Parish Priest himself, six hundred florins are spent annually to assist the poor. But who is ignorant that, first of all, the superfluous revenues of the benefice should be used to assist the Patron, before others? Let Lambert be heard, *de iurep.*, lib. 1, q. 1, n. 6, n. s *in fine* – there: « Nor does it hinder what is said, that this is harsh to the Church, because, as we said in the second and third

Translated by churchlatin.ai, a product of Boyne Archives

articles above, the Church gives from what remains to her, and as much as is possible, which would be entirely for the poor, as we said in the second article, a more ordered charity is to be given to servants, than to others, to the Patron, to the wife, to the children, and to the poor, who can seek help from others. » Considering both of these things, the proposed doubt must be resolved. Whether and how the prayers of the Rector should be received in this case? Resolution. The Holy Congregation of the Council responded affirmatively, regarding the division of five hundred florins in each month, beginning from the month of January of this year.

THEREFORE, IT IS UNDERSTOOD:

I. That a Patron of a benefice who is in need has the right to receive sustenance from the superfluous revenues of the benefice.

II. That the revenues of the benefice are to be used to assist the Patron in need.

[*Latin ed. p. 739*]

Pensions or allowances are to be considered superfluous when something remains beyond the honest sustenance of the beneficiary and the needs of the Church. III. The Church ought not only to assist the poor patron, from vacant benefices, but also from the benefice itself. DECREE OF THE HOLY CONGREGATION OF THE COUNCIL, to which the Ecclesiastical Provinces of Venice and Milan, and all Parochial Dioceses subject to metropolitan jurisdiction, are subject, applying all that which, concerning the popular election of pastors, has been most wisely established in the most recent Encyclical Letters of November 21, 1873, for the Helvetic Confederation. The active and pernicious sects, which have almost everywhere seized power, seek to pervert all order, and to undermine the very foundations of the Constitution of the Church of Christ, and dare even to stir up the people in Catholic Italy, so that, imitating the nefarious example of some Swiss, they may presumptuously claim the right to choose their own spiritual guides. And, what is worse, it has not been lacking among some most misguided ecclesiastical men, who have dared to accept, and even to assume, the parish office in such a perverse manner. This is a deplorable act, which completely overturns and utterly degrades the Ecclesiastical Hierarchy: for, says Pope Celestine, the people are to be taught, not followed; and we, if they do not know what is permitted, and what is not permitted, must admonish them, and not give our consent to their actions. Therefore, a rash presumption against the statutes of the Holy Fathers, is a crime of both ambition and disobedience, from which, according to Gregory VII, the greatest disturbances arise in the Church (indeed, the ruin of the holy religion), from which Christian religion is trampled upon. Therefore, it is not surprising that the Holy Canons have always condemned this wicked-

Translated by churchlatin.ai, a product of Boyne Archives

ness, and have devoted it to the most severe penalties. The most illustrious Gregory VII, in D. 1, c. 1, dist. 63, Canon 2; in D. 12, Can. 1, and Can. Quoniam 13, Caus. 16, q. 7; and in D. 12, Can. 1, Can. Quoniam 13, Can. Si quis Episcopus 1, 4, Caus. 16, q. 7, 2.

[*Latin ed. p. 740*]

Decree 740. The Holy Fathers Paschal II and Alexander I, and the Council of Lateran held under Alexander III, solemnly decreed that the investiture of the Church received by the hands of laymen is to be considered null and void, and that clerics who receive such investiture are to be forbidden from entering the Church, and are to be subjected to excommunication, and, if they persist in this crime, they are to be removed from ecclesiastical office. Moreover, this kind of crime further involves the most grievous usurpation of jurisdiction, of the goods and rights of the Church, which the Council of Trent subjected to an anathema for as long as the usurpation continued, and the Apostolic Constitution of the Holy See, of the 4th of October, 1869, declared to be subject to a special excommunication of latae sententiae, reserved to the Roman Pontiff. However, since these most salutary sanctions of the Holy Canons have not deterred the audacity and wickedness of the innovators, so that the very same outrage is perpetrated in the regions of Italy mentioned above, which had recently been suppressed in neighboring Switzerland by Apostolic authority, the Most Holy Pope Pius IX, moved by the greatest concern and charity for all his sheep, ordered this Sacred Congregation of the Council to take the same measures against this evil; and therefore, he ordered that the Ecclesiastical Provinces of Venice and Milan, and all the dioceses subject to patriarchal and metropolitan jurisdiction, should apply and impress upon them, as is now being applied and impressed upon them, all those things which, with regard to the popular election of parish priests, were most wisely established in the most recent Encyclical Letters of the 21st of November, 1873; so that whoever in the aforementioned dioceses, with the consent of the people, dares to be elected to the office of parish priest or vicar, or to seize the pretended possession of the Church, or to perform the duties of ecclesiastical ministry, shall, by that very act, incur a major excommunication specially reserved to the Holy See, and other canonical penalties, and all such persons are to be avoided by the faithful, according to the divine precept, as if they were aliens or thieves, who do not come except to steal, to kill, and to destroy. Thus, furthermore, the same Sacred Congregation of the Council decreed and ordered to be observed by all, with all exemptions and privileges, even those worthy of special mention.

4. Given at Rome, from the Secretariat of the Sacred Congregation of the Council, on the 23rd of May, 1874.

P. Card. CATETINI, Prefect.

P. Archbishop of Sardinia, Secretary.

Translated by churchlatin.ai, a product of Boyne Archives

1. Canon 16.
2. Canon Constitutiones 17.
3. Canon Nullas 18.
4. Canon Sicut 19.
5. Causes 16, q. 7.
6. Canon Per laicos 20.
7. Causes 16, q. 7.
8. 3 Cap. Praeterea 4 de iure patr.
9. 4 Sess. 22, cap. 11 de Reform, s Part. I, § 11.

[*Latin ed. p. 741*]

FROM THE HOLY CONGREGATION FOR PENSIONS OF BISHOPS AND REGULAR CANONS. March 14, 1873. Summary of the case. In the Diocese of P., a Priest, R., having held an Archpresbyteral parish for 22 years, spontaneously resigned it, reserving for himself an annual pension of thirty-six scudi. – He obtained the sanction of this reservation from the Holy See, through a Bull, in which the income of the archpresbyteral benefice was calculated at two hundred scudi per year. – This pension was diligently paid for several years; but when the Archpriest G. became aware of the most recent decree of January 28, 1871, he considered that it was no longer appropriate to maintain a pension which did not reach the amount of the benefice's income. – The pensioner opposed this; and, having obtained nothing from the Ordinary, he then appealed to the Holy Penitentiary, and then to this Holy Congregation, submitting a petition in February of the year 1872, in which he stated that, being in the very grave age of eighty years, his due pension should be restored. The Ordinary, questioned on February 28, presented an account, in addition to his own information regarding the priest G., and a declaration, in which he stated that the parish, when reported to the Holy See, had an income of two hundred scudi; that, moreover, it had never been the case that the archpresbyteral benefice had been a suitable provision, since its income barely reached the sum of one hundred scudi; and that, therefore, it was not necessary to pay anything for the pension. The Bishop, after stating the facts that had been presented, added that the Archpriest was in need, and did not have sufficient means of support from the parish income, where

[*Latin ed. p. 742*]

742. Penstonis ad pensionem solvendam adigeretur. - 2. Quod tributa tam praebendae archipresbyteralis, quam canonicatuum, Sacristiae ac Fabriceriae sumptibus soluta sunt, qui si iam ab anno 1870 impares erant huiusmodi sustinendis oneribus, multo magis hodie tales evaserunt. - 3. Quod cum talem erogationem reddituum Sacristiae in divini cultus detrimentum cedere perspiceret, se voluntatem habuisse praescribendi singulis praeben-

Translated by churchlatin.ai, a product of Boyne Archives

datis, ut proprio aere effectum perduceretur, pensione solvenda tributa persolverent, Archipresbytero nihil quod si ad remaneret pro Tales animadversiones Presbytero R. communicatae fuere ; qui opposuit; quod omissis incertis proventibus, sola praedia rustica, tata cura 168. solerti Neque culta, hos reddere possunt quotannis scu- redditus imminui tributis sive regiis, quia iis satisfit duarum praebendarum redditibus ; sive municipalibus cum ab his Archipresbyter decimas non recipiat. Argumentum sit exemptus, eoquod aliud extrinsecum ad huius Praebendae pinguedinem probandam ex eo deducebat, quod Archipresbyter masque expensas G. multas sustinuerit pro emerit possessiones, educandis maxi- nepotibus ; hinc differri nullatenus debere, aiebat, pensionis solutionem, intuitu citati Decreti. In tali ac tanta assertionum et calculorum discrepantia, iterum Episcopo scriptum fuit, ut S. Congregationem certiorem redderet de omnibus archipresbyteralis Praebendae redditibus atque oneribus, ac simul referret quonam titulo aliarum Praebendarum gravamina, Sacristiae et Fabriceriae sumptibus solverentur. Huius S. C. mandatis morem gerens Episcopus, die 15 maii referebat, redditus Archipresbyteralis Praebendae ab Ordinario S. suo antecessore supputatis fuisse in annuis scutatis 91,05 comprehensis scutatis tributionibus obvenientibus, Gubernio denuntiavisse suae atque 18, 45 ex incertis et disArchipresbyterum Paroeciae Italico redditibus attingere summam L. 788,33 a quibus, subductis scutatis 45 pro Mis-

742. The parish priest was being pressed to provide funds for a pension. - 2. The taxes for both the archpriestly benefice, as well as for the canonries, the sacristy, and the fabric (church maintenance), are paid; and if these were already insufficient to bear such burdens in the year 1870, much more so are they inadequate today. - 3. Seeing that such an expenditure of the sacristy's revenues was detrimental to the divine cult, he declared that he wished to order that each beneficiary should, with their own funds, fulfill the effect of paying the taxes for the pension, so that nothing would remain for the archpriest. These observations were communicated to the priest R., who opposed this, arguing that, without certain revenues, only the rural properties, which, with diligent cultivation, yield 168 scu- (a unit of currency), cannot yield such revenues annually, because they are diminished by taxes or royal dues, since they suffice for the revenues of two benefices; or municipal taxes, since the archpriest does not receive tithes from them. He argued that he was exempt, and that he deduced another external reason to prove the worth of this benefice, namely, that the archpriest had borne many expenses for acquired properties and for the education of his grandchildren; therefore, he asserted, the payment of the pension should not be deducted, in view of the cited decree. In such a great discrepancy of assertions and calculations, the Bishop was again written to, so that he might inform the Sacred Congregation of all the revenues and burdens of the archpriestly benefice, and also report by what title the burdens of other benefices were paid for the expenses of the sacristy and the fabric.

Translated by churchlatin.ai, a product of Boyne Archives

Following the mandates of the Sacred Congregation, the Bishop reported on May 15th that the revenues of the archpriestly benefice had been calculated by his predecessor, the Ordinary, to be 91,05 scu annually, including the scu received from taxes, reported to the government, and 18, 45 scu from uncertain and diverse Italian revenues, amounting to L. 788,33, from which, after deducting 45 scu for Mis-

[*Latin ed. p. 743*]

Regarding the burdens of the pension of Sarum, it remains to be settled whether the elderly G. owes 743 *scuta*. However, he claims that 101 *scuta* are due, from which sum he is pursuing his claim, and that he dares not offer more, given the burden he has undertaken. Concerning the matter brought before the court regarding the payment of capitular dues from the revenues of the Sacristy, he stated that formerly, the prebends of the Archpriest and other canons constituted a common fund; but that for almost a century, the prebends have been divided, and that one of them, that of the Sacristy, has been attached with the burden of providing sacred vessels and vestments, and of paying the debts of its own prebend and those of other prebends. But since these burdens have been increased, some of the canons have attached certain common revenues to the Sacristy, which, although currently insufficient to cover the burdens of the Archpriest and the canons, they will supplement what is lacking. With these considerations, after a period of one month for the parties to present their claims, the question was proposed under the form of doubt written at the end.

WHAT REMAINS IN FAVOR OF THE PRESBYTER R.

Firstly, it was observed that an executive title for the pension is considered a liquid and certain means of obtaining its due, according to Lutter, lib. 2, quest. 10, n. 76; Buratt., dec. 383; and that it cannot be delayed by objections of a higher investigation; Card. De Luca de pension, disc. 38, n. 4. Indeed, the exception raised by our Presbyter G. seems insufficient, both in law, and because it does not appear that the term "scuta centum" in the Tridentine decree concerning "Congruae" should be understood as a fixed or definitive amount. Furthermore, in fact, there is disagreement among those who are most concerned with determining the amount of the Archpriest's prebend, which amount should regularly be deducted from a calculation of one decade; Card. De Luca de pension, disc. 6, n. 13, de benef. disc. 83, n. 5.

However, even though there is discussion regarding the nature of "Congruae," it cannot be denied that the value of this benefice was designated in the reservation bull as 200 annual *scuta*, and one cannot depart from

Translated by churchlatin.ai, a product of Boyne Archives

this.

[*Latin ed. p. 744*]

The matter of the pension is denounced in 744 different ways, until the contrary is clearly proven. And indeed, it cannot be maintained, as the Ordinary himself asserts, that the assertion of the Presbyter G. is the basis for proof, since he reduces the income to barely a quarter of that expressly stated in the Bull; therefore, it seems just that the Presbyter R. should remain in peaceful possession of his pension, from which, if it were taken away, the conciliar income would still remain complete. But while the Presbyter G. does not provide any argument by which to validly demonstrate that the calculation of income stated in the Bulls is false, the Pensioner, on the contrary, proves the truth of that calculation with documents, both from the inventory of the Church and from the parochial books, from which it is clearly deduced that the income derives from various rural properties, amounting to 178 scudi; and that the income from uncertain ecclesiastical sums amounts to 25 scudi per year. Nor are these incomes subject to royal taxes, which impose burdens that, as has been demonstrated, are deducted from two prebends; the Church receives either from the archpresbyteral, or from municipal sources, and each is obligated to pay only with his own funds what is lacking, when the two prebends are not sufficient to cover the expenses. The Presbyter G. has presented a document which undoubtedly shows that the income of the benefice, even after the newly imposed burdens, possesses a sufficient amount to sustain the burden of the pension. Indeed, the Bishop states that the very Presbyter G. has reported to the Italian Government that the sum of the debts amounts to no less than 788.33, while the income of his prebend, after deducting other expenses and the fruits due to land taxes, Masses, and other burdens, which amount to 45 scudi, is sufficient. Therefore, from the confession of the Archpresbyter himself, it is clear that even at present the income of the benefice exceeds the conciliar income, and therefore he is not at all exempt from paying the pension. However, even if the matter of the pension payment were doubtful, a peaceful and undisturbed period of approximately...

[*Latin ed. p. 745*]

The sum of 745 florins would provide a most serious argument in support of the true value of the benefice, as stated in the Bull, since it cannot be presumed that, in this matter, the various holders have always been silent. See *Rota*, Decree 346, *circa* Celso; Decree 186, n. 16 and 17, part 6; *Recueil Romain* of pensions, January 2, 1646, *circa* Cerro. However, if the hypothesis is admitted that the revenues of this benefice were so meager that they were generally insufficient to support a pension, this would not benefit the Reverend G., firstly, because of the particular nature of the

Translated by churchlatin.ai, a product of Boyne Archives

pension; for since this was accepted with the intention of resigning the benefice, it takes on the character of a burdensome and conditional obligation, which, if not fulfilled, would immediately restore the original rights of the one who resigned, and therefore cannot be subject to reduction. See *Rota*, Decree 631, part 1; Decree 286, part 2; *Recueil*, Decree 61, n. 6 and 7, *circa* Otthob. Secondly, because the Reverend G. received a parochial benefice, which, according to his confession, yielded the most meager revenues, along with the pension, and which he peacefully maintained for a period of approximately thirty years. Indeed, the acceptance of a benefice necessarily implies, by itself, a quasi-contract between the holder and the Church; therefore, the peaceful and long-lasting payment of the pension by the holder undoubtedly confirms the consent of the same holder. Therefore, it seems not permissible for the Reverend G. to argue against the fact of the insufficiency of revenues; since he must impute to himself if he accepted a benefice that was inadequate to sustain its burdens. See *Rota*, Decree 7, n. 3; Decree 23c, n. 1, part 13.

WHAT REMAINS IN FAVOR OF THE REVEREND G.

The holder was favored, as the Decree *Cum nuperrimis*, concerning parishes and Episcopal tables burdened with pensions, states that "integrity must always be preserved and maintained, and it must be adequate," according to the form of the Council of Trent. Although it is not necessary to investigate here what the true adequacy of a parochial benefice may be, it is certain, according to the norm of Trent, that no parishes can be burdened with pensions "which exceed the sum of one hundred florins," according to their true annual value. Indeed, the benefice in question has never been of this kind.

[*Latin ed. p. 746*]

The value of the pension appears to have been insufficient, even when compared to the pension imposed at the time; for the Bishop himself reported that his predecessor had rendered an account of the assets and liabilities, from which it was determined that such revenues amounted to only the annual sum of 9,105 scudi; in this sum were also included 18.45 scudi from the common fund. Further arguments support this inadequacy of the provision. For in the year 1822, the Archpriest petitioned the Bishop to impose upon the Sodalitas S. Iacobi the obligation of paying 18 scudi for the assistant priest, whom he himself was unable to support, which the Reverend Father R. kindly granted. Furthermore, in the year 1830, he was burdened with the tax commonly known as "dei fuocatico" and presented a document from the Municipality, by which he had been exempted from taxes. And the Provincial, in reply to this supplicatory letter, requested that the Apostolic Delegation grant the requested exemption, because his

Translated by churchlatin.ai, a product of Boyne Archives

provision did not have, nor had ever had, the "congrua" established by the Council of Trent. In the year 1839, another tax (commonly called "a imbottaggio") was imposed, and he again sought to be exempted from it; but since the Reverend Father R. had not obtained this exemption from the Apostolic Delegation, he appealed to the Ordinary, and at his request, the supreme authority granted the exemption, until a sufficient provision was provided. Therefore, it is clear that the Archpriest was burdened with a pension, although he did not have the conciliar "congrua" provision, and therefore, in violation of the prescription of Trent, the Reverend Father R.'s burden was unjustly retained. Therefore, it seems that no judgment can be rendered, both because of the binding decree with which the Council's decree is supported, and because of Leg. 5, Cod. de leg. "things which are prohibited by law, if they have been done, are not only 'unfruitful,' but are also considered 'as if they had not been done,' even if the legislator has only 'prohibited' them, and has not specifically stated that what has been done 'must be' considered useless." Also, the reservation does not seem to be valid, due to the defect of indulgence and prevarication of the pontiff. For the Reverend Father R., as...

[*Latin ed. p. 747*]

He would obtain a burdensome pension, and IM knowingly increased the amount of the income, the retention of which, if considered by the Holy See, would never have granted the requested favor. But since the exaggerated demand of the Presbyter cannot be excused by ignorance or good faith, the aforementioned pension, Chapter [number illegible], is declared null and void, as a punishment for deceit, according to articles 13 and 20 of the Regulations. But even setting aside the original nullity of the pension, it is evident that, if the burden of it was already considered excessive in relation to the beneficial income at that time, it must be considered even more so now, since the newly imposed burdens have become more onerous. Therefore, it must be concluded that, even if the reservation made in connection with the pension had not been subject to any exception, the present case falls under a circumstance from which it could not have originated. The arguments presented do not lose their force because the expenses for the Sacristy are paid from its revenues; indeed, these revenues are so insufficient to cover the expenses that each of the Canons is obliged to supplement the deficit from his own resources. Nor can it be argued that the disputed pension was granted under the title of resignation, and therefore should be considered exempt from reduction, because such a privilege would only apply in the case of a "resignation," under the condition that the person had not been removed from office, and in no other way; and the provision adopted to regulate the relations between the pensioner and the incumbent, with the addition of the current extraordinary decrees, must be applied "without any distinction between the benefits and the pensions

Translated by churchlatin.ai, a product of Boyne Archives

themselves." Finally, the tacit acceptance of such a burdensome pension by the incumbent cannot be inferred to be a renunciation of the benefit, even after several years of appropriate, albeit meager, payment, and certainly not after the payment has ceased. For the provision for the sustenance of the incumbent was established for the purpose of preventing incumbents from being forced to seek sustenance with dishonor to their ecclesiastical dignity, or from abandoning the flock entrusted to them. *Rota in dec. 420 n. 4, part. i, dec. 44c n. 3, part. 2, dec. 23 n. 13 part. 18 tom. i rec.*

[*Latin ed. p. 748*]

Pension 748. It is the law that a cleric cannot renounce anything that may prejudice his own interests, whether concerning his order, or the well-being of the Church. *Rota*, Decree 437, number 1, and II, part 1, Decree 230, number 7 and following, part 6. Regarding the custom of paying dues with the chapter revenues, the Ordinary reports that the Archpriest and Canons cite a custom of unforgettable antiquity; which undoubtedly provides a very strong title. For custom, when endowed with the necessary requirements, derogates from common law, where it has been valid and is presumed to have established a law; chapter concerning the customary title, which is better than the law of the world, without excluding the apostolic approval. *Rota*, Decree 332, *Corpus Benincasa*, Abbey of Verulana, April 23, 1706, and June 20, 1707. Nor does such a custom appear to cause any prejudice to the divine cult; for whenever there is a deficiency in the general administration of the Church for fulfilling all obligations, all, and each, of the chapter members are called upon to contribute. However, the Ordinary explains that the division of the prebends, and the assignment of one of them to the Sacristy, occurred almost a century ago, and therefore the custom of paying dues with the Sacristy revenues cannot be older; nor is it certain whether the invoked custom has a period of one hundred years in its favor, and whether it is entitled to the title of "unforgettable." Furthermore, this custom appears unreasonable, because the revenues of the prebend, to which they are directed, with serious detriment to the divine cult, are allocated. Therefore, the Bishop considers it to have been introduced abusively, and adds that if everyone wishes to preserve and promote the dignity of the divine cult, it is necessary to determine that the dues of the prebends, and that the Sacristy satisfy its own obligations. With these and other considerations, the purpose is to resolve the matter.

[*Latin ed. p. 749*]

Pension 749. Question. "Whether the Priest (G.) is also obligated to pay the reserved pension, granted by the Priest (R.), in this case?"

RESOLUTION. The Sacred Congregation of the Holy Office, having knowledge of the matter, decided on March 14, 1873, to respond as follows: Regarding the cessation of the pension, negatively; but concerning

Translated by churchlatin.ai, a product of Boyne Archives

the payment for unforeseen expenses, the most recent Decree of January 28, 1871, should be followed.

THEREFORE, IT IS UNDERSTOOD THAT:

I. It is more difficult to grant an exception to a pension which is reserved under the title of resignation, since it takes on the character of a burdensome and reciprocal obligation.

II. In the doubt whether a suitable conciliar favor granted to the Parish Priest remains valid or not, the certain right of the pension prevails.

III. In pensions which are imposed in parochial benefices, the aforementioned Decree applies, but with the conditions which this Sacred Congregation of the Holy Office has established in the case of the Pension of May 30, 1874.

11. See Phase 7, Volume September of this Ephemeris, page 328.

[*Latin ed. p. 751*]

SUMMARY OF THE ACTS CONTAINED IN THIS SEVENTH VOLUME, ARRANGED SIMILARLY TO CONSISTORY PROCEEDINGS.

A letter from the Most Holy Father to His Eminence James Antonelli, Cardinal, Prefect of the Affairs of the Pontifical States, dated June 16, 1872, concerning the attempted suppression of Religious Orders in Rome by the Piedmontese usurper government.

The Most Holy Lord's Constitution concerning the Privileges of the Apostolic Notaries, commonly called "Protonotaries," in which their privileges are declared and limited.

Apostolic Letters in the form of a Brief concerning the Apostolic Notaries, issued on February 9, 1853, declaring and limiting their ancient privileges.

The Most Holy Lord's Address given on December 23, 1872, to the Cardinals of the Holy Roman Church, in which He denounced the most grievous persecution inflicted upon the Church by the governments in Italy, Germany, Switzerland, Spain, and Constantinople, and in which He exalted the unity of the Catholic episcopate.

An Encyclical Letter from the Most Holy Father to the Patriarchs, Archbishops, Bishops, Clergy, and People of the Armenian Rite, who hold communion with the Apostolic See, in which, after recounting events, the Armenian schism is revealed, and the insidious deceptions of the schismatics are exposed, so that the simple faithful may not be deceived.

The Most Holy Lord, Pope Pius IX's Address given on July 25, 1873, to the Cardinals of the Holy Roman Church, in the Vatican buildings, in which He denounced with an anathema those who have participated in the creation of the unjust law of suppression, and those who will participate in its execution, including those who purchase the property.

Translated by churchlatin.ai, a product of Boyne Archives

Apostolic Letters, or a Constitution from the Most Holy Lord, concerning Capitular Vicars, as well as those elected and appointed to vacant episcopal sees.

An Encyclical Letter, in which the Most Holy Father, stripped of all defenses, vehemently laments the most grievous tribulations by which the Church is not only violently afflicted in Italy, but also in Switzerland and Germany by the governments; He refutes the public calumnies of the rulers; He teaches that there are two powers established by God; He mentions the heretics who call themselves "old Catholics," whose pseudo-bishop, Hubert Reinkens, He specifically anathematizes, along with his associates and adherents; He mentions the existing sects by which the Church is afflicted in America.

[*Latin ed. p. 752*]

752 Summary of events, both good and bad, which have arisen from schisms within the society: It exhorts bishops, clergy, and the faithful people to constancy in the struggle. Letters Apostolic, by which the special ecclesiastical jurisdiction in the territories pertaining to the four military orders of St. James, Alcantara, Calatrava, and Montesia in Hispania is abolished; and these same territories are joined to the neighboring dioceses. Letters Apostolic, by which all privileged ecclesiastical jurisdictions in Hispania are abolished; and the territories, places, and monasteries hitherto subject to them are joined to the neighboring dioceses. The Holy Father's Encyclical Letter to the Cardinals, Archbishops, and Bishops of the Austrian Empire. The Holy Father's Letter to the Archbishop of Leopolis, Halic, and Kamenets, and to other Bishops of the same Rite who have communion and are in grace with the Apostolic See. Letters Apostolic, by which the judgment pronounced by the Archbishop of Milan concerning the identity of the Body of St. Ambrose, Bishop and Doctor of the Church, and of the martyrs Gervasius and Protasus, is confirmed. 496 512 518 565 629 635 FROM THE SECRETARY OF BREVES. Letters Apostolic concerning the Apostolic Vicariate for the Central African missions. 25 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH. Concerning the establishment of a new Pro-Vicar Apostolic for the Central African missions. 27 FROM THE SACRED CONGREGATION OF THE HOLY ROMAN INQUISITION. Authentic Declaration concerning the Constitution of the Apostolic See, by which it is declared that the Constitution of Urban VIII, *Ex debito*, and of Clement IX, *Sollicitudo*, which impose the censure of excommunication on those engaged in commerce, are still in force. 342 APPENDIX IX. The Constitutions of Urban VIII and Clement IX, by which commerce is strictly prohibited under penalty of incurring excommunication, to all missionaries, in the provinces of Eastern India, China, and Japan, and also in both Southern and Northern America. 344 FROM THE SACRED CONGREGATION OF THE INDEX. Decree, by

Translated by churchlatin.ai, a product of Boyne Archives

which certain books are prohibited. Decree of March 1, 1873, by which certain books are prohibited. Decree, by which other books are prohibited. 104 307 489

[*Latin ed. p. 753*]

Summary of Acts 753 from the Sacred Penitentiary Apostolic. Page. Response concerning lower officials of civil military service employed in the domains of the Holy See. 160. Legal responses concerning the relationship between suppressed Regular clergy and local Ordinaries. 161. Warning from the Sacred Penitentiary Apostolic regarding the manner of issuing letters concerning matters of conscience. 227. Concerning agreements for the restoration of metallic currency, excluding paper currency, in order to comply with civil law, such agreements being rendered invalid by that law. 228. APPENDIX IV. Concerning private agreements for the restoration of metallic currency, excluding paper currency, which agreements are invalidated by the civil government, even if that government is illegitimate. 233. Concerning the power to grant absolution from reserved penances during the present Jubilee. 240. Response of the Sacred Penitentiary to the question of whether the faithful are obligated to observe the time indicated by public clocks during natural and ecclesiastical fasts, even though that time may not be the true time or the time of their own region, but rather that of a foreign region. 428. From the Sacred Congregation of the Council of Trent. Concerning the right to perform funerals, in which the question is debated whether the right to perform funerals ceases in those churches of Regular clergy, in which, after an unjust suppression, only one Regular priest remains as the custodian of the church. 27. Concerning the division of a parish, in which the question is debated whether a large parish should be divided into two independent parishes or not. 41. Concerning a dispensation from irregularity, in which the case of a priest who became deaf and requested a dispensation to celebrate Mass is discussed. 51. Concerning marriage, in which the case of a marriage contracted between a Catholic and a heretic in Italy, before a non-local parish priest, is discussed. 54. Concerning the alms of the second Mass, in which the request is made that a repeated Mass be applied to the benefit of specific deceased persons, according to a prior agreement. 76. Concerning irregularity, in which the question is debated whether a person lacking visual acuity in the left eye and who is deformed should be considered irregular. 86. Concerning a dispensation from irregularity, in which the question is asked whether a dispensation should be granted to a person who remains impaired by a stroke affecting the right arm. 88. Concerning the nullity of a decree, in which the case of the union of a simple benefice made by the Bishop with the sacristy of the cathedral church is discussed, the decree of which is declared null. 146. Concerning a chaplaincy, in which the case of the union of a certain lay chaplaincy made by the patrons of the parish church is

Translated by churchlatin.ai, a product of Boyne Archives

discussed. 154. Concerning funerals, in which the case of the right of nuns to perform funerals and to lead the deceased to the public cemetery by a chaplain without the intervention of the parish priest is discussed. 177. Acts, volume VII, page 84.

[*Latin ed. p. 754*]

754 Summary of Acts, Page III. Concerning the relationship between the rights of Parish Priests and Regular Canons with regard to the burial of deceased Regular Canons in the public cemetery.

187 Applications of Masses, in which the question is raised as to whether a priest, who is obligated to say Mass daily, can be excused from celebrating for a few days.

190 Doubts concerning the application of the Parish Mass, in which the matter is discussed of a Parish Priest legitimately absent from his parish, and of the real and personal obligation to celebrate and apply the Mass for the people.

201 Of Stipends, in which the duties and rights that exist between a Canon Coadjutor and a Canon Coadjutor in choral service are discussed.

211 Concerning Dispensations for Absence, in which the matter is discussed of a Canon who, while healthy, had neglected his duties in the choir, and who is now requesting the benefits of his position due to his illness.

215 Concerning Dispensations from Irregularity, in which the matter is discussed of a Priest who lost his hand in an explosion.

299 Concerning Jubilees, in which it is asked whether a Canon, as a cleric, can obtain the Indult of Jubilee.

302 Doubts concerning the powers to grant dispensations from matrimonial impediments, granted to the Bishops of Sicily.

313 APPENDIX VI. Concerning particular and extraordinary faculties, which are granted by the Holy Congregation for the Propagation of the Faith, according to the circumstances of the missions.

325 APPENDIX VII. Instruction for a simple Priest administering the sacrament of Confirmation by delegation from the Holy See, published in the year 1774, and which is still in force.

330 Concerning Competitions, in which it is debated whether a competition for a parish is valid, in which examiners are chosen who have attained a certain level of knowledge, and in which only the remaining qualifications or requirements are considered, while all other candidates are completely disregarded.

366 APPENDIX. All documents by which the method by which the Tridentine decree concerning competitions for the collation of parishes is to be carried out more effectively is prescribed.

379 Constitution of St. Pius V. Concerning the conferring [of benefits].

Translated by churchlatin.ai, a product of Boyne Archives

380 Discussion of the Secretary in the case agitated by a candidate in the year 1720 in the Sacred Congregation of Rites, concerning appeals due to a bad report from the examiners or due to an unreasonable judgment by the Bishop in the collation of a parish through competition.

383 Instruction issued from Orta San Giulio, with the approval of Clement XI.

395 Constitution of Benedict XIV. Concerning this matter.

399 Of Stipends for Funerals, in which the matter is discussed as to whether the stipends for funerals belong to the Parish Priests, whether for a Bishop who dies in the cathedral or in the countryside.

408 Concerning Tithes, in which the matter is discussed of the tithes on land, which landowners were denying to the Parish Priest, because the land was converted into a better condition, located outside the parish.

416 Concerning Parochial Jurisdiction, in which the matter is discussed of an old house, new APPENDIX.

[*Latin ed. p. 755*]

Summary of Acts 755, page. concerning a construction project extended beyond the boundaries of a parish; and concerning which parish the pastoral care pertains.

422 Nullities of Decrees, for which a cause is presented as an example of procedure, in summary judgment, for correcting delinquent clerics.

440 Doubts concerning the faculties of granting dispensations from matrimonial impediments, for which reason a distinction is indicated between dispensations granted by delegates from the Holy See, and dispensations granted by the Holy See itself.

453 Of a dispensation from serving in the choir, which is negligently denied.

462 Of the prolongation of a rescript, which prolongation is not granted when the causes of the original rescript have not ceased through negligence.

466 Of a dispensation from irregularity, which dispensation, although not obtained from the petitioner, was duly granted after renewed prayers.

469 Of a marriage duly contracted, irregularly dissolved due to the wife's impotence, who, having become capable, married another man.

523 Of the right of burial, in which case it is inquired whether adopted minors should be buried in the tomb or parish of the adoptive father.

537 Of obligations, in which case it is inquired whether a temple held under patronage can be converted into a parish church if the faithful require it.

542 Of patronage, in which case it is inquired whether the Ordinary can deny canonical institution in a parish, even when a suitable patron has

Translated by churchlatin.ai, a product of Boyne Archives

been presented by a lay patron, if others are deemed more suitable and approved.

547 Of elections, in which case the question is raised whether the name of the elector can be expressed in Chapter elections which are conducted secretly or by scrutiny, and whether an election conducted otherwise is tainted by nullity.

573 Of marriage, in which case it is discussed a marriage contracted in the city of New York before a parish priest who was not the proper one.

582 APPENDIX, in which several questions are clarified which are connected with the aforementioned matrimonial cause.

593 Of the erection of a baptismal font, in which case it is debated whether the concession of a baptismal font granted by the Ordinary to a certain parish is valid, when the subjects of that parish are accustomed to bringing infants to be baptized in another, principal church.

597 Of an appeal, in which case it is concerned with a decree by which a bishop prevented an abbot, against whom an episcopal consistory had passed sentence, from filing an appeal to the metropolitan.

607 Concerning deputies of the seminary, in which case the question is resolved whether a deputy appointed by the clergy in office perseveres in his canonical office in the cathedral church.

613 Of precedence, in which case the question is resolved whether the coadjutor of a capitular dignity should sit before or after other dignities, and whether he should perform all the functions that would belong to his coadjutor if he were present.

615 Of parochial jurisdiction, in which case the question is raised whether...

[*Latin ed. p. 756*]

756 In some cases, a house situated on the boundary between two parishes may escape the jurisdiction of the parish priest to whom it should rightfully belong, by means of a newly constructed entrance on the other side.

642 Regarding chaplaincies, the question arises whether, by a Pontifical Rescript, the will of the testator concerning the erection of a collegiate church, and thus the right of patronage, has been altered, and whether this right, whether active or passive, is thereby extinguished, even though the Pope has not explicitly stated so.

650 Doubts proposed for resolution to the Holy Congregation.

662 Concerning marriages, the question is raised regarding the validity of marriages.

694 Concerning canonries, the question is raised whether a union of a canonry with a parish, established by a bishop, is valid without the author-

Translated by churchlatin.ai, a product of Boyne Archives

ity of the Apostolic See.

704 Concerning the deprivation of a parish, the question is raised whether the provision of the Council of Trent, in chapter 1, session 3, concerning a parish priest who is forced to leave his residence, can be applied.

713 Concerning canonical rights, the question is raised whether a canon of a second foundation has the right to participate in capitular elections.

721 Concerning pensions or allowances, the question is raised whether a poor patron has the right to an allowance or pension from the benefice.

732 By Decree, all that which is applied to the ecclesiastical provinces of Venice and Milan, and to each patriarchal and metropolitan diocese, is also applied to those things which, with regard to the popular election of parish priests, are established in the most recent documents for the Helvetic Confederation, dated November 21, 1873.

739 FROM THE SACRED CONGREGATION OF BISHOPS AND REGULARS. Concerning the restoration to integrity and the nullity of profession, in which case the matter is discussed regarding a Sicilian girl, of versatile intelligence, who, surrounded by the persuasions of her parents, had solemnly professed her vows.

274 Concerning the obligation of Masses, in which case the matter is discussed regarding the release of a priest from the obligation of Masses which he had omitted in good faith, and regarding the explanation of the founder's intention in light of changed circumstances.

289 Decree concerning the reduction of ecclesiastical pensions in proportion to the confiscation of goods by the Subalpine Government.

350 Doubts concerning the reduction or suppression of pensions.

353 Concerning a dispensation, or rather an institution, in which case the matter is discussed as to whether and in whose favor a dispensation and institution should be granted in a canonry of right of patronage among those who are contending for it.

667 Concerning rights and privileges, in which case the matter is discussed regarding the privileges which should devolve to the Archconfraternity of the same title existing in the City, which are attached to the Confraternity of the Holy Death, by virtue of its aggregation.

677 Concerning pensions, the question is raised whether a parish priest whose benefice's income does not seem to reach a suitable level is obliged to pay a pension.

741

[*Latin ed. p. 757*]

From the Acts, number 757, from the Sacred Congregation concerning Regular Discipline. Page. Decree from the Audience of the Most Holy [Fa-

Translated by churchlatin.ai, a product of Boyne Archives

ther], by which it is decreed that Regular clergy shall be subject to that Provincial in whose territory they reside. Decree from the Audience of the Most Holy [Father], by which it is decreed that Regular clergy who have refused to be subject to the Superiors of their Order concerning their residence shall be deprived of their privileges. Decree from the Audience of the Most Holy [Father], by which it is provided that there shall be no wandering Regular clergy. Circular Letter to the Superiors of the Orders, in which it is stated that, if there are incorrigible irregularities, the Sacred Congregation has obtained the power to proceed with a summary judgment for their expulsion. Also, a Circular Letter, by which it is provided for the designation of local Superiors.

From the Sacred Congregation of Sacred Rites.

Rome, or the Order of Cîteaux. Decree concerning the cult rendered from time immemorial to the Servant of God, Pope Eugene III, now called Saint and Blessed. 107. Decree issued in his cause. 124.

Naples. Decree concerning the cult rendered from time immemorial to the Servant of God, Maximus, Bishop of Naples, now called Saint and Blessed: a controversy with the Decree is explained therein. 127.

Malaga or Seville. Decree concerning the validity of the proceedings in the cause of the venerable Servant of God, Didacus Joseph of Gadiz, of the Order of the Capuchins. 135.

Rome or Sezze. Decree concerning the miracles of the venerable Servant of God, Father Charles of Sezze, of the Order of the Minor Reformers. 135.

Rome or Alban. Decree concerning the writings of the venerable Servant of God, Gaspar Del Bufalo. 137.

Annecy. Decree concerning the confirmation of the cult of the Servant of God, Peter Fabri, the first member of Saint Ignatius. 138.

Divion. Decree concerning the introduction of the cause of the Servant of God, Benign Joly. 139.

Naples. Decree concerning the Apostolic process in the cause of the venerable Servant of God, Giles of Saint Joseph of Alcantar. 140.

Bugella and Venice. Decree concerning the confirmation of the cult of the Servant of God, Augustine Fangi, of the Order of the Preachers. 141.

Rome or Einen. Decree concerning the proceedings of the venerable Servant of God, Father Angel of Pas, of the Order of the Minor Friars of Saint Francis. 142.

Naples. Decree concerning the cult not exhibited to the venerable Servant of God, Father Aloysius of the Most Holy Cross, of the Order of Alcantar. 142.

Constantine. Decree concerning the virtues of Blessed Nicholas of Flue,

Translated by churchlatin.ai, a product of Boyne Archives

a Swiss Hermit. 143.

[*Latin ed. p. 758*]

758 Summa of Acts, page Bellicen. or Decree concerning the introduction of the cause of the venerable Servant of God, John Baptist Vianney, Parish Priest of Ars.

220 Romana or Bolonian. or Decree by which two miracles of Blessed Benedict Labre are proven, for the purpose of Canonization.

222 Romana or Bolonian. or Decree in the same cause, by which it is determined that it is permissible to proceed to the solemn Canonization.

224 Panormitana or Decree concerning the virtues of the venerable Servant of God, Father Andrew of Burgio, a lay Capuchin.

225 Neapolitan or Decree concerning the validity of the Processes in the cause of the venerable Servant of God, Christina of Savoy, Queen.

226 Concerning the praise of Saint Maximus, Martyr, Bishop of Naples, to be inscribed in the Roman Martyrology.

226 Indult granting the celebration of the feast of Blessed Eugene III to all those who follow the Roman Calendar of Clergy.

337 APPENDIX VIII. Office with Mass of Blessed Eugene III, approved by the Sacred Congregation, for those who follow the Roman Calendar.

338 Romana or Mechlinian, or Decree concerning the Apostolic Process concerning new miracles of Blessed John Berchmans.

340 Indiarum or Carthaginian, or Decree concerning the Apostolic Process concerning new miracles of Blessed Peter Claver.

341 Neapolitan or Decree concerning the introduction of the cause of the Servant of God, Father Francis of Laculibero, of the Order of Capuchins.

342 Romana, concerning Doubts, or Decree concerning the proper manner of venerating the Divine Infant.

472 Neapolitan or Pinnen, concerning the main points of the cause of the venerable adolescent, Nuntius Sulpritii, concerning the validity and relevance of the Apostolic Process concerning the reputation for sanctity in general, and for this reason, the cause is commended to the charity of the faithful.

473 Decree of the same Cause.

481 Parisian, or Decree concerning the introduction of the cause of the Servant of God, Theresa of Saint Augustine, of the Order of Carmelites.

482 Amerina or Decree concerning the validity and relevance of the Apostolic Process concerning the reputation for sanctity in general of the venerable Father Generosus of Praemosello.

483 Vicentine or Venetian, or Decree concerning the non-cult of the venerable Father Anthony Pagani, Priest of the Order of Saint Francis.

484 Lucionen, or Decree concerning the non-cult of the venerable Aloy-

Translated by churchlatin.ai, a product of Boyne Archives

sius Baudouin, founder of the Congregation of the Sons of Mary Immaculate, etc.

484 Divionen. or Decree concerning the non-cult of the venerable Benignus, Canon Joly.

485 Neapolitan or Decree concerning the validity of all Processes of the venerable Michael Angelo of Saint Francis, a lay member of the Order of Alcantarini.

486 Ruthenen. or Decree concerning the non-cult of the venerable Mary William Emilia of Rodat, foundress of the Sisters of the Holy Family.

486 Rothomagen, or Decree concerning the virtues of the venerable John Baptist of the Salle, founder of the Christian Schools, in a heroic degree.

487 Romana or Decree concerning whether the virtues of the venerable Servant of God, Father Anthony Baldinucci, professed Priest of the Society of Jesus, are in a heroic degree.

[*Latin ed. p. 759*]

Summary of actions in Rome, or Decree concerning the validity and relevance of the Apostolic Process regarding the reputation of the holy life, virtues, and miracles of the venerable Servant of God, Anne Mary Taigi, Tertiary of the Order of Discalced Carmelites of the Most Holy Trinity for the Redemption of Captives... Baiocen, or Decree for the introduction of the cause of the venerable Servant of God, John Eudes, Apostolic Missionary and Founder of the Congregation of Jesus and Mary, as well as the Order of the Most Holy Virgin Mary of Charity Refuge... Rome, or Decree concerning the introduction of the cause of the venerable Servant of God, Elizabeth Canori-Mora, Tertiary of the Order of Discalced Carmelites of the Most Holy Trinity for the Redemption of Captives... Senones, or Decree confirming the cult, which from time immemorial has been devoted to the holy Alpaidi...

News of the untimely death of the Reverend Father Peter Avanzini, author of this Ephemeris.

FROM THE SACRED CONGREGATION FOR INDULGENCES.

Decree for the City and the World, by which Indulgences are granted to the faithful who, during the month of June, offer prayers to the most august Heart of Jesus.

FROM THE HOLY FATHER.

Concerning the new small Scapular of the Heart of Jesus, enriched with certain Indulgences.

Concerning the benefits of the pious Society which bears the title, the Apostleship of Prayer.

Translated by churchlatin.ai, a product of Boyne Archives

APPENDICES.

Appendix III follows, concerning the commentary on the Apostolic Constitution, and it deals with propositions condemned by the Holy See under the penalty of excommunication.

Appendix V.

A moral question concerning craniotomy, or the killing of a child in the womb of the mother, in order to save the mother from certain death.

[*Latin ed. p. 761*]

INDEX OF CONCLUSIONS, EXPLAINED AND NOTED, WHICH ARE FOUND IN MOST OF THE ACTS, OR REGARDING THE GENERAL SUBJECT MATTER CONTAINED IN THE ACTS OF THIS VOLUME.

These conclusions are included under the following words:

Appeal. Arbiter. Archicongregations concerning privileges. Benefice concerning union. Canon of the second erection. Canon concerning the service of the choir. Choir concerning the Coadjutor. Clergy concerning crime. Coadjutorships. Collegiate Church. Concursus; Decimals. Dismemberment of a Parish. Marital dispensations. Dispensation from irregularity. Election. Funeral emoluments. Erection of a Parish. Erection of a baptismal font. Minors concerning burial. Indult of the Jubilee. Indult of Jubilation. Right of patronage concerning foundation and presentation. Right of patronage concerning donation. Right of patronage concerning the poor patron. Civil laws. Legislator concerning the dispensation of laws. Letters of dismissal. Marriage concerning consent. Marriage concerning the Council of Trent. Marriage concerning the impediment of impotence. Conventual Mass. Mass concerning daily celebration. Obligations of Masses. Mass for the people. Mass concerning repetition. Regular Orders. Pact concerning the restitution of money. Parish Priest concerning parochial rights. Parish Priest concerning residence. Sacred Patrimony. Ecclesiastical pension. Process concerning the causes of Servants of God. Appeal to a secular Tribunal; Religious Houses. Rescripts concerning pious wills. Holy Congregations concerning Rescripts. Seminary concerning Deputaties. Right of burial. Betrothal. Suspension based on informed conscience. Parish territory. Testator concerning pious foundations. Violence and fear. Appeal. An appeal interposed by one who has full power from his superior to appeal can obtain if it is subsequently ratified by the superior, for what we do in another's name, is equivalent to a mandate if it is accompanied by ratification, page 427. Especially if it is in the interest of the one who appeals that the appeal be made, which means that he is not entirely a stranger to the case; such as the parish vicar in matters pertaining to the temporal rights of the parish, although this obligation belongs to the Rector principal, ibid. For example, an attempt against a judge to whom an appeal is made is not only whatever is true

Translated by churchlatin.ai, a product of Boyne Archives

from the Episcopal Curia, but also whatever is decided by the Bishop concerning the sentence pronounced by the Curia, while the right of appeal is pending, page 612.

[*Latin ed. p. 762*]

762 General Index: Therefore, it is not permissible for a Bishop, by decree, based on informed conscience, to prohibit an appeal or the prosecution of an appeal against a sentence pronounced by the Tribunal, ibid. Arbiter. Without a compromise, which consists in an agreement, a voluntary arbitrator who does not define according to the law is not permitted, nor is an arbitrator who defines according to what is good and equitable; therefore, if there is no compromise, the laws established concerning arbitrators cannot be invoked, page 427. Archiconfraternity concerning privileges. To judge which privileges granted to the Archisodalitas devolve to the Confraternities aggregated to it, the nature of those privileges must be considered; for those which relate to the original purpose of the institution devolve to the aggregated Sodalities, but those which pertain more to adornment, in no way do they devolve, page 692. The formulas used in granting these privileges in the acts of aggregation must also be considered, page 693. The indult of a private oratory granted to the Archisodalitas has been abrogated, ibid. Indeed, Bishops do not have the power to grant such a privilege, unless there are great and urgent reasons; and even with these reasons present, it can be granted as an act of charity, ibid. Among these reasons, infirmity, the time of the plague, the urgent need to administer Viaticum to the sick, even if the public church is closed, and the difficult and costly ways to reach it, are absolutely not included, and are positively excluded, ibid. Generally speaking, the chaplains of a Confraternity may wear the stole, even outside their own church, during the association of the dead, ibid. A Confraternity of the Dead cannot, at its own discretion, bury the bodies of the poor or the slain, whenever the proper parish priest is willing to bury them, ibid. In the case of a canonically ordained burial in the church of the Confraternity, the funeral must be conducted by the proper parish priest, provided that the church or oratory of the Sodalitas is within the limits of that parish, ibid. Otherwise, it pertains to the chaplain of the same Sodalitas to conduct the funeral, reserving a fourth of the funeral expenses for the parish priest, ibid. Benefit concerning union. In any union of benefices, a just and reasonable cause must be present, namely, necessity or the benefit of the Church, page 712. The Bishop cannot unite churches with monasteries, abbeys, prebends of cathedrals, or collegiate churches, or with simple benefices, or with hospitals or military orders, ibid.

[*Latin ed. p. 763*]

Index generalis 763. Nec potest pariter dispensari super pluralitatem beneficiorum incompatibilium, pagina 712. Decretum Concilii Tridentini,

Translated by churchlatin.ai, a product of Boyne Archives

quod facultatem tribuit Episcopis iungendi simplicia beneficia Praebendis ecclesiae cathedralis vel collegiatae insignis (si Praebendae cum suis distributionibus quotidianis sustinendo decenti Canonicorum gradui pro loci et personarum qualitate non sufficiant), est strictae interpretationis, pagina 152. Quare illa facultas non extenditur ad eas Praebendas, quae fictione tantum iuris dicuntur Praebendae, idest quando consistunt in solis distributionibus quotidianis, pagina 153. Nec potest extendi ad capitularem mensam, quamvis ex capitulari mensa Canonici redditus, qui tenues existimantur, accipiant, ibidem. Multoque minus illa facultas extenditur ad cultum sacristiae vel fabricae ecclesiae, ibidem. Ideoque tantum verba Concilii Tridentini valent quantum exprimunt, praesertim cum re agatur, quae respectu beneficii uniendi odiosa sit atque speciem sapiat alienationis, ibidem. Quare quoties Episcopus unire beneficia simplicia non possit vi dicti capitis 15, Sessio 24, non alia suppetit via quam imploratio facultatis a Sede Apostolica obtinendae, ibidem. Canonicus secundae erectionis. Canonicus secundae erectionis non debet ab aliis membris ipsius corporis distingui, sed participat de omnibus iuribus et praeeminentiis canonicalibus ad instar antiquorum, pagina 732. Idque procedit etiam si servitium praestandum ex testatoris dispositione sit difforme et inaequale ab eo quod praestatur ab antiquis, ibidem. Hinc ius competit ipsis ferendi suffragia in electionibus, caeterisque actibus capitularibus, quae concernunt statum et servitium Ecclesiae et Sacristiae, non vero in his quae respiciunt interesse et iura particularia veterum canonicorum, ibidem. Canonicus quoad servitium chori. Capitularis infirmus ipso iure est a chorali servitio exemptus, quin ius amittat percipiendi distributiones quotidianas et reliqua emolumenta, quae percipere solent actu praesentes: iis tamen distributionibus exceptis, quibus recipiendis resisteret voluntas fundatoris vel dantis, vel altera pecuniaria legitima causa, pagina 219. Constare tamen debet de infirmitate, quae sive directe interventum in choro impediat, sive indirecte per necessariam aegritudinis curam, quae ex praescripto medicorum sit facienda, ibidem. In dubio de legitimae aegritudinis causa, iudex est Episcopus, qui post iuratam medicorum fidem iudicare potest juxta SS. Canones et rerum adiuncta, an et quomodo sit danda absentiae venia, ibidem.

[*Latin ed. p. 764*]

764 General Index: Regarding the granting of such permissions for the purpose of administering distributions, it must also be considered whether the sick Chapter Canon has sufficiently fulfilled his duties while in good health, 219. Indeed, justice does not permit a sick Chapter Canon, as if present in the choir, to be considered in the same manner as one who, while in good health, neglected his duties to the choir. Ibid. Concerning the Coadjutor: In determining the place, honors, and rights that belong to Coadjutors of Chapters, both the various customs of the places and the tenor of the Apostolic Letters by which the coadjutorship is conferred must

Translated by churchlatin.ai, a product of Boyne Archives

be observed, page 622. If, however, all custom is lacking and nothing can be derived from the Apostolic Letters, then the following distinction applies: the Coadjutor must sit, and proceed before all Canons, and after all Dignitaries. Ibid. Furthermore, the functions, acts, and jurisdictions that belong to the Coadjutor pertain to him, and he may exercise them as if he were present in that dignity, Ibid. This applies whether the matter concerns functions, acts, and jurisdictions that are proper to the coadjutorship, or whether it concerns those that, by law, devolve to the coadjutorship itself. Ibid. Clergy concerning crimes: In criminal cases against clergy who are concubinaries, proceedings must be conducted according to the provisions of the Council of Trent and those sacred canons that have not been superseded by those provisions, page 451. Regarding Parochial vicars who live scandalously and shamefully, the Council of Trent specifically provided for this in chapter 6, session 21, on Reform, page 452. These provisions of the Council of Trent agree in that both Clerical Beneficiaries and Parochial vicars must be deprived of their benefices when, after having tried other legal remedies or penalties without success, they have proven to be incorrigible. Ibid. Therefore, if in a judicial proceeding, whether solemn or summary, any of these crimes are proven, and as a result, a Beneficiary or Parochial vicar is deprived of his benefice or parish by sentence, there would be no deprivation; because by this, the Beneficiary is not shown to be incorrigible. Ibid. Conversely, if, after prior warnings and other legal remedies, a Beneficiary has not abandoned a suspected woman, or has not changed his immoral behavior, a judgment for the deprivation of the benefice could be difficult to successfully challenge, if the external formalities have not been observed; because for this, a summary judgment is sufficient, that is, a method of proceeding without the pomp and circumstance of a formal judgment, but with justice observed, as dictated by the nature of the matter itself. Ibid. When it comes to criminal cases, according to the ancient canons, an ecclesiastical judge can be moved to initiate proceedings in three ways: 1. by accusation; 2. by denunciation; 3. by inquisition. Ibid.

[*Latin ed. p. 765*]

Index generalis 765. When the manner of opening a process through accusation falls into disuse, denunciation and inquiry remain: these two methods of proceeding are often confused in practice and are reduced to one, namely, inquiry, 452. The judge should not judge and, in a certain way, anticipate the case based on the clamor of a crime or on denunciations; but both clamor and denunciations should be considered as just motives for opening a process, so that a judgment may then be rendered from the process, page 453. Coadjutorship. The canonical coadjutorship has a twofold effect: that is, it grants the coadjutor the right to future succession to the canonical prebend; and it grants the coadjutor compensation in the receipt of all canonical emoluments, as if he were present in all the functions, or

Translated by churchlatin.ai, a product of Boyne Archives

other things, which the Chapter carries out, page 214. Therefore, the coadjutor is obligated to compensate the coadjutor for all those things which the coadjutor did not receive from the Chapter, and which he would have received if he were present, ibid. Therefore, if any question arises as to whether the coadjutor has been legitimately penalized, such a question does not burden the coadjutor; but it must be settled between the coadjutor and the Chapter before the proper authority, page 215. However, the coadjutor cannot receive anything that he would not have received through his presence, if he did not have a coadjutor; because, by fiction of law, the coadjutor and the coadjutor represent only one person in canonical rights, ibid. Collation. The collation of parishes cannot be carried out by the Bishop without prior concurrence, or at least prior canonical examination of suitability in writing, notwithstanding the law of foundation, page 712. Collegiate Church. Not all the laws, which, from the Council of Trent (Tridentini), chapter 12, session 24, concerning reforms, were established for canonical churches, are valid for canonical collegiate churches, page 306. Specifically, the words of Trent: "in all cathedral churches, all canonries and portions must have attached to them the order of the presbyterate, diaconate, or subdiaconate" are limited only to cathedral churches, ibid. Therefore, in collegiate churches, the old common law still prevails, according to which it is sufficient that the canon be a cleric, unless something prevents it by particular laws, ibid. However, the Bishop must take care that a suitable number of priests is not lacking, so that all choral duties may be properly fulfilled, ibid.

[*Latin ed. p. 766*]

766 General Index. The form of the competition and examination for the conferral of parish churches, as prescribed in the Council of Trent, Session 24, canon 18, concerning reform, must be observed, so that any conferral of parishes made otherwise is thereby null; page 376. However, such a form can be put into effect in various ways, within the prescribed provisions of the same Council of Trent; ibid. To eliminate this variety, by which the Tridentine form was put into effect (not without considerable harm) first by the Sacred Congregation of the Council, then by Clement XI, and finally by Benedict XIV, appropriate rules were established, by which both the aforementioned harms were avoided, and conformity of method was induced; ibid. These rules were not prescribed with the intention of establishing a substantial form, the neglect of which would itself render the competition or examination invalid and null; ibid. This is evident both from the tenor of the prescriptions of the rules, and from the fact that the clause that declares something invalid if done otherwise, does not accompany such prescriptions; ibid. Therefore, in order for a competition to be declared invalid and null, it is necessary to demonstrate, for example, that the aforementioned rules were not observed due to deceit and fraud, since

Translated by churchlatin.ai, a product of Boyne Archives

deceit and fraud must be proven against no one, or that the rules were neglected, so that by that neglect, the Tridentine form itself was neglected; page 377. Hence, it is also possible for a custom to arise contrary to such rules; and it cannot be said that a custom is unreasonable simply because it is contrary to the aforementioned rules; ibid. It is one thing to prove, solely from knowledge, without examination, that something was contrary to the Tridentine form; it is another thing to not conduct the required examination, because someone, in his knowledge, did not reach a certain level of suffrage that other candidates have attained; ibid. Therefore, the second case is not demonstrated to be contrary to the Tridentine form, which, although it states: "After the examination, those who are judged suitable in age, morals, doctrine, prudence, and other things suitable for governing the vacant church, shall be announced," it did not determine what more or less made a candidate suitable, so that it must or must not renounce among the approved; ibid. Indeed, Benedict XIV, although he established that doctrine must be closely associated with the requirements, and that all of these, when considered together, should cause the ineligible to be rejected by the votes (of the Examiners) and the suitable to be presented to the Bishop, nevertheless, he established that the first judgment should be made by the examiners based on knowledge, with the words: "After they have diligently examined the expertise of each..." and after they have finally discovered in which area each excels in the gravity of their judgments, etc.; page 378. If, in addition, there is an unforgettable or long-standing custom that has determined the form of the competition in such a way that someone who has not reached a certain level of knowledge that others have attained, should not, for that very reason, be included among those to be approved, then, in a question raised for this reason regarding the nullity of the competition, it must be judged whether it is the case that there is nullity; ibid.

[*Latin ed. p. 767*]

Index generalis 767. Decimae. Parochus habet ius, fundatum in lege, decimas praediales intra limites suae paroeciae recipiendi, p. 420. Ideoque, inquantum Parochus est, decimator est, non quidem particularis in aliqua praescripta specie fructuum, sed universalis in quavis specie fructuum ex praediis existentibus intra limites paroeciae, ibid. Cum hoc reale ius pro parocho valeat, in eum qui se solutum a solvendis decimis putat, onus incumbit demonstrandi solutum esse a decimis solvendis, ibid. Ius percipiendi decimas non cessat nec suam naturam mutat, si, dismembratione paroeciae facta, aliquis fundus, qui antea decimabatur, extra limites pristinae paroeciae manere contigerit: ius enim reale in fundum decimalem gravans non mutat per diversam administrationem paroeciae; cum dismembratio paroeciae diversam tantum administrationem bonorum inducat, ibid. Neque Parochus decimator debet concurre ad impensas a

Translated by churchlatin.ai, a product of Boyne Archives

domino in fundo factas aliquo modo compensandas, cum ipsa natura iuris decimandi, quod habet Parochus, consistat in perceptione partis fructuum, quos fundus quomodolibet cultus producit, ibid. Dismembratio Paroeciae. Paroeciarum dismembrationes, secundum veterem iurisprudentiam, consideratae sunt tamquam rerum ecclesiasticarum alienationes, p. 49. Proinde eiusmodi dismembrationes subiectae sunt iisdem legibus quae alienationes dirigebant, ibid. Eiusmodi leges fuerunt existentia canonicae causae, scilicet necessitatis vel evidentis utilitatis in iudicio cognitae; et solemnitas, idest interventus in causa eorum quorum dismembratio interesset, p. 50. Non quaevis necessitas vel evidens utilitas considerata fuit tamquam canonica dismembrationis causa, sed ea tantum necessitas quae utiliter superari non posset per Parochi Vicarium seu per Capellanum, ibid. Eiusmodi canonica iurisprudentia ab elapso saeculo declinare paulisper incepit; ita ut data sint exempla dismembrationis paroeciae in locis, in quibus per Parochi Vicarium consuli satis potuisset populi necessitatibus, ibid. Dispensationes matrimoniales. Tribunal ordinarium pro dispensationibus matrimonialibus concedendis in foro externo est tantum Apostolica Dataria: Sacra autem Poenitentiaria in his dispensationibus in foro externo concedendis est Tribunal extraordinarium cum limitatis facultatibus pro pauperibus, p. 460. Utrumque tamen Tribunal, cum negotiis Romani Pontificis, quae expedit, nomine, mente et voce Romani Pontificis aut expedit, aut expedire censetur, ibid.

[*Latin ed. p. 768*]

768 General Index. Not everything that is debated or asserted concerning the power delegated to Bishops in such dispensations can be said in the same way about dispensations granted by the Apostolic Dataria or the Sacred Penitentiary.

For Bishops use a power truly delegated to them, and they have their own tribunal, from which appeal is also made to the tribunals of the Roman Pontiff; whereas, in the case of an appeal from a Delegate to the Delegating authority, conversely, the Datary and the Penitentiary are the auditors of the Roman Pontiff in the exercise of supreme power over the entire Church. Therefore, if there is a difference in the distribution of powers among the tribunals of the Roman Pontiff, it is not for any other reason than that the domestic order is maintained in this ministry of the Roman Pontiff, ibid. It can never be presumed that this order is not observed by the tribunals of the Roman Pontiff, although perhaps they may have extended their hand in the administration of powers; and therefore, it can never be presumed that the powers granted by the tribunals are null, ibid. Therefore, the entire question arises from the part of the orators or petitioners, who may be able to obtain a dispensation by deception or trickery, either in good faith or bad faith, ibid. But deception or trickery committed by the orators is not presumed, but must be clearly shown, ibid. Once deception or trickery

Translated by churchlatin.ai, a product of Boyne Archives

has been proven, or has been admitted without controversy, then those rules apply which the Canonists commonly teach, derived from the law, for judging whether a rescript of the Roman Pontiff or Apostolic Letters, by which a dispensation is granted, are valid or not, ibid. Such questions cannot be defined with a single, general answer, since, due to the diversity of circumstances, different rules of law apply, which sometimes lead to an affirmative and sometimes to a negative judgment, ibid.

Dispensation from Irregularity. In the case of an irregularity arising from apoplectic illness, although many circumstances may concur that suggest a dispensation; the Sacred Congregation, however, proceeds with great caution in granting this grace, especially on account of the danger that may arise in the celebration of the Mass, page 91. It is doubted whether one who does not see with the left eye, or who has a deformity, either in himself or in reading the canon, is irregular, page 88. Therefore, the requested grace, although it is sought for the purpose of advancement, is easily obtained by the Sacred Congregation, ibid. In this case, the Sacred Congregation did not use the words "dispensation" and "habilitation," which would indicate a "titulus irregularis," ibid. A priest who has become irregular due to the amputation of a hand can hope for an Apostolic dispensation if the danger of irreverence and admiration among the people is removed by a prosthetic hand that conceals the deformity, page 302. However, these factors are not sufficient to obtain the grace of a dispensation; but canonical reasons are required, which are necessity or evident benefit to the Church, ibid.

[*Latin ed. p. 769*]

Index 769 generalis: Surditas non iudicatur de modo eodem, sive in promovendo, sive surditas quae Presbytero supervenerit, p. 52. Dispensatio Apostolica utile est petenda, quamquam non videatur absolute necessaria, p. 53. Distributiones chorales. Distributiones quotidianae profutentur solum his qui divinis intersunt, nisi absentes sint a choro causa iure permissa, p. 712. Canonicus cui adnexa est cura animarum, absens a choro ministerii causa, habetur pro praesente et interessante, et ideo lucrabitur distributiones quotidianas, ibid. Nec Capitulum nec Episcopus remittere possunt distributiones a negligentia amissas, ibid. Ecclesia quoad matricitatem. Ecclesia, in stricto sensu canonico, est Ecclesia cathedralis, vel talis ecclesia, in cuius dismembratione aliae Ecclesiae filiales constitutae sunt, juxta Concilium Tridentinum, p. 606. Electio. Rigor Cap. Quia propter 42 de Electione procedit solum quando agitur de electione Pastoris seu Praelati Ecclesiae viduatae, non vero in provisione ad canonicatus aliaque beneficia et officia capitularia, in quibus sufficit consensus capitularis quoquo modo praestitus, p. 581. Conveniens tamen est electionem seu provisiones eiusmodi fieri per schedas secretas, ibid. In electione Superiorum quorumcumque Abbatum temporalium et aliorum officialium ac generalium, Abbatissarum atque

Translated by churchlatin.ai, a product of Boyne Archives

aliarum praepositarum, procedendum est per vota secreta sub poena nullitatis, aliisque, ex Concilio Tridentino, Sess. 25, Cap. 6 de Regul., ibid. Emolumenta funebria. Ad normam iuris communis, decedens ruri, quo animo recreandi gratia se contulit, non est in rurali ecclesia sepeliendus; sed in propria paroecia, si absque periculo ad eam possit deportari, p. 413. Quare cum ruralis paroecia talem defunctum sepeliendi ius non habeat, neque ius ad emolumenta habeat, p. 414. Haec omnia multo maiori iure vigere si de Episcopo ruri defuncto agatur, cum Episcopus communibus Parochorum iuribus non subsit, sitque sepeliendus in cathedrali Ecclesia, si alibi non elegerit sepulturam, ibid. Templa Regularium, quae iure sepeliendi gaudeant, sunt quoque exempta a paroeciali iurisdictione, ita ut cadavere ad templum RegulaActa. tom. VII, fase. LXXXIV. 49.

[*Latin ed. p. 770*]

770 General Index. If a cemetery is assigned to a parish, all parochial rights and duties concerning burials cease, except for the proportion due to the parish priest for the burial of the deceased, which is called the "quarta funeralis," and is determined according to local customs, page 38. The "quarta funeralis" does not belong to the parish priest in whose parish the burial ground is located; but rather to the parish priest proper of the deceased, even if that parish priest belongs to another parish, page 40. Establishment of a Parish. If necessity or evident utility requires that a church serve as the patronal church of a new parish or a new parochial vicariate, this is granted by Apostolic authority, so that the church is not established as a parish, but rather the parish is established within the church, page 546. For it is not permissible to infringe more upon the will of the founders than is required by the very cause of necessity, or evident utility, so that, as far as possible, the church may serve both the patrons and the new parish with distinct and separate rights, ibid. This is especially granted by the Apostolic See if the law of foundation does not, by its nature, oppose the establishment of a parish, ibid. Establishment of a Baptismal Font. Even if a church is established in the strict canonical sense, if the Bishop, prompted by necessity or utility, allows a baptismal font to be erected even in filial churches, such an erection is permitted, page 606. Minors Regarding Burial. The father may choose the burial place for his minor children, but not for deceased spouses or heirs, page 692. Minor children who have been under the father's authority are to be buried in the family burial ground, or in the paternal parochial church, page 542. Minor children remain under the father's authority until it is proven that a legitimate adoption has taken place, by which the minor child, according to civil law, has passed into the authority of the adoptive father, ibid. If such a transfer is proven, paternal rights are considered to have been transferred to the adoptive father; therefore, the adopted minor child is to be buried in the burial ground of the adoptive father, ibid. Indult of

Translated by churchlatin.ai, a product of Boyne Archives

Jubilee. The indult granted during the same Jubilee, by which anyone may be absolved by any confessor in the forum of conscience from any sins, except for the absolution of a complice in a scandalous sin, is granted to the penitent only once, page 240.

[*Latin ed. p. 771*]

General Index 771: Wherefore, if someone has duly obtained the Indulgence of the Jubilee, but has never, however, been ensnared in reserved sin, if, while the Jubilee still endures, he falls into a reserved sin, he can be absolved by any Confessor, through the repetition of assigned works, page 241. Although, when dealing with an Indulgence granted in the manner of a Jubilee, certain rules are observed, which are commonly applicable to each Jubilee, nevertheless, these rules cannot prevail over the Apostolic Letters which are issued in each instance, if they are not in harmony with the Apostolic Letters, or if they perhaps signify something different from the mind of the Pontiff, ibid. Jubilee Indulgence. Although the Chapter member who has faithfully and continuously fulfilled his choral office for forty years is granted the Jubilee Indulgence out of equity; nevertheless, such a reward is not deserved by one who has been negligent in the choir, page 465. Indeed, neither does one deserve the Indulgence for the sake of infirmity: for, whether prompted by justice or equity, one cannot be considered as present in the choir, who, being in good health, has most frequently denied his presence to the choir, ibid. Especially if the infirmity is of such a nature that, although chronic, it does not entirely prevent the sick person from attending the choir, ibid. The lack of sacred orders does not prevent the obtaining of the Jubilee Indulgence, since such a reward is not granted because of the exercise of the sacred orders, but because of the choral service, according to the laws and laudable duties of the Church, page 306. Right of Patronage concerning foundation and presentation. The founder of a benefice can, at the very foundation, impose whatever conditions he wishes, provided they are not contrary to good morals or impossible, and the Bishop accepts them, page 712. The right of patronage ceases when the cause for which someone was a patron is terminated, page 661. When the right of patronage, whether active or passive, is extinguished, the Church or the Bishop succeeds by right, ibid. Although, in the right of patronage, the words "family" and "house" do not, by their very nature, determine kinship, nevertheless, in Italy, it is customary that such expressions, unless there is contrary evidence, do not designate equally all relatives and those related by blood, but only the direct ones; while others are considered as secondary, page 676. The nomination of Patrons is considered as an imperfect act, and confers no right on the nominee, before it is presented: to this Patron, a lay person can withdraw, and change it, before it has been presented to the Ordinary, ibid. The presentation must be made within the prescribed time; otherwise, the power to provide for the position devolves

Translated by churchlatin.ai, a product of Boyne Archives

to the Bishop for that occasion. The time for presentation is fixed at six months for an ecclesiastical Patron, and four months for a lay Patron, ibid.

[*Latin ed. p. 772*]

772 Index generalis. Intra tempus utile ad praesentandum, exhibenda est petitio pro dispensatione obtinenda; alioquin nulla ipsius habetur ratio, pagina 676. Ad ipsum Ordinarium devolvitur facultas providendi, quoties praesentati iis qualitatibus destituantur, quas in favorem aut decus Ecclesiae pius Fundator praefixit, ibidem. Concilio Tridentino statuente, Patroni laici possunt Episcopo praesentare quem velint ut Episcopus in Paroeciali beneficio instituat si idoneum repererit; repertum idoneum sive per formam concursus, si ex consuetudine concursus viguerit, sive alio modo, nequit Episcopus seu Ordinarius illum recusare, pagina 551. Satis enim est ut patroni idoneum praesentent, atque uti idoneum recognoscat, seu recognoverit Ordinarius, quamvis fortasse existant alii magis idonei, et digniores, ibidem. Quare si eiusmodi Beneficia paroecialia Iurispatronatus laicalis conferantur per concursum, sive ex facto sive ex legitima consuetudine inductum, inter probatos seu repertos idoneos, quotquot fuerint, ille a Patronis poterit ab Episcopo instituendus in Beneficio praesentari, quem maluerint, ibidem. Iuspatronatus quoad donationem. Quamvis in iure certum sit, posse Patronos laicos iuspatronatus donare alicui Ecclesiae, interveniente Episcopi consensu; non possunt tamen donationem facere si donatio evertat fundationis legem, pagina 158. Haec referuntur etiam ad capellanías laicales, quae in mera legata pia facile resolvuntur, quamquam pro eiusmodi cessione iuris neque requiratur Episcopi consensus, ibidem. Quoties enim ex donatione vel cessione iurispatronatus evertatur lex fundationis, Patroni, etiamsi interveniat Episcopi consensus, frustra agunt, pagina 159. Iuspatronatus quoad patronum pauperum. Patrono beneficii inopia laboranti, ius est alimenta percipiendi ex superfluis beneficii reditibus, pagina 738. Reditus beneficii, ad egeno succurrendum patrono tunc superflui reputantur, cum aliquid supersit praeter honestam beneficiati sustentationem, et Ecclesiae necessitatem, ibidem. Ecclesia patrono pauperi non modo succurrit de beneficio vacante, verum etiam de ipso beneficio pleno, ibidem. Leges civiles. Nihil exploratius in iure canonico est, leges civiles etiamsi favorabiles fuerint catholicae Ecclesiae, ex sese nihil prorsus valoris habere si ecclesiastica competenti auctoritate non fuerint confirmatae, pagina 551.

[*Latin ed. p. 773*]

Index generalis 773. Non potest concludi ex eo quod Apostolici Nuntii existant ubi eiusmodi leges civiles ferantur, quod hae leges probatae censentur; nam multa per patientiam toleratur, quae si deducta essent in iudicium, tolerari non deberent, pagina 551. Legislator quoad legis dispensationem. Facultas dispensandi a lege in Legislatore non est considerata

Translated by churchlatin.ai, a product of Boyne Archives

odiosa; eodem enim iure eam habet, quo iure legem facit: neque proinde ea facultas, alteri a Legislatore commissa, per se est odiosa, cum per delegationem non mutet naturam, pagina 321. Odiosa tamen plus, minusve esse potest dispensandi facultas a Legislatore commissa, quando constet, mentem esse Legislatoris, ut verbis quibus facultas expressa est, coerceatur, neque praescriptos limites egrediatur, pagina 322. Id constare multipliciter potest, intrinsece per explicita Legislatoris verba in concessione facultatis expressa, vel ex modo quo facultatem Legislator concesserit eam accurate limitando; vel ex fine aut motivo concessae facultatis, vel ex rei de qua agitur gravitate, aliisque adiunctis: extrinsece per SS. Canones vel Ecclesiae praxim, quae sensum facultatis concessae sive implicite sive explicite determinaverit, ibid. Dispensatio concessa pro uno impedimento non iuvat pro altero quamvis sit eiusdem speciei, ibid. Litterae dimissoriae. Praelatus Ecclesiae exemptae quae intra Episcopi Dioecesim reperiatur, si habeat facultatem concedendi litteras dimissorias ad sacros ordines, non potest effugere iurisdictionem Episcopi Dioecesim, nisi forte gaudeat privilegio ordinare faciendi suos subditos a quovis catholico Episcopo, pagina 302. Matrimonium quoad consensum. Matrimonium, servatis ceteris de iure servandis, consistit in actuali contractu, cuius essentia est liber consensus, pagina 72. Eiusmodi consensus debet esse mutuus inter sponsum et sponsam, atque expressus sive verbis sive signis aequivalentibus, quae contractum exprimant et constituant, pagina 73. Quare si sponsus in actu contrahendi matrimonium affirmet et sponsa taceat nullumque det signum mutuae affirmationis ita ut mere passive se habeat, matrimonium non censetur contractum: deest enim mutuus atque expressus consensus, ibid. Si autem concurrant adiuncta, quae tacentem consensisse in matrimonium ostendere possint, non facile sive in foro interno, maxime vero in foro externo iudicanda est matrimonii nullitas, ibid.

[*Latin ed. p. 774*]

774 General Index. Such circumstances are those in which no force or fear intervened, and no coercion; rather, the free will of both parties preceded and accompanied the act of contracting, and in the very act of celebration, the woman, remaining silent, readily accepted the nuptial consent offered by the man, page 73. In these circumstances, unless it can be proven that these actions were undertaken in jest, the validity of the marriage must be upheld, page 74. Marriage with regard to the Council of Trent. If someone living in a place where the decrees of the Council of Trent are observed, moves to another place where the decrees of Trent have not been promulgated, or have ceased to be binding, with the intention of contracting marriage there: such a marriage, entered into fraudulently, is invalid unless a domicile or quasi-domicile has been established in the place of celebration, page 592. To establish a quasi-domicile, mere residence is not sufficient, but an intention to remain for the greater part of the year is required, ibid.

Translated by churchlatin.ai, a product of Boyne Archives

Therefore, even if someone has resided elsewhere for one month, if other evidence exists from which it can be determined that there was no intention to remain there for the greater part of the year, then no quasi-domicile was established, ibid. Heretics who live in places where the decrees of the Council of Trent have been promulgated must contract marriage according to the laws of Trent, before their own or the other party's parish priest, if they wish to contract a valid marriage, page 74. The argument of the society to which the heretics belong is of no avail: for the heretical sect can only operate in such a way that, on the part of the Catholic authority, the decrees of Trent are not promulgated, or if they have been promulgated in those places, they fall into disuse over time, in the same way that individual ecclesiastical laws can eventually fall into disuse, ibid. Therefore, heretics are not exempt from this law of the Church, but either the Trent decrees do not apply to their places, or their disregard for the law has, over time, legally superseded the local law, ibid. Marriage with regard to the impediment of impotence. Proven impotence, whether absolute or relative, which preceded the marriage and was permanent, renders the marriage null by law, page 535. In the external forum, in order to prove such impotence, the form of judgment prescribed in the Benedictine Constitution *Dei Miseratione* must be observed, page 536. However, even with such a form of judgment observed, it can sometimes be difficult to determine whether the impotence is absolute or relative, if it is established that the marriage remained valid, it is often resolved by an Apostolic dispensation, ibid. A marriage that has been declared null by law due to the woman's absolute and permanent impotence must be restored if the impediment naturally ceases afterward, ibid.

[*Latin ed. p. 775*]

Index generalis 775 For the error of a judge, even if probable, cannot render a marriage null, which is naturally valid, although it may not have been consummated, page 536. Therefore, if the impediment of the woman ceases, and the woman marries another man while the first husband is still living, this second marriage will be null, and the woman will be obligated to return to the first husband, ibid. Conversely, the second marriage will be valid, if the woman's impotence, whether relative or absolute, is truly perpetual, and has been overcome, except or contrary to the order of nature, ibid. For in this case, since the first marriage was null by law, it cannot be restored if the woman marries another: the second valid marriage would stand in the way of the first, ibid. Indeed, the same must be said, even if the impotence is only relative and perpetual with the first husband, if another man, dissimilar to the first, makes the woman capable even with the first husband through a second marriage: for from this fact, the first marriage, which was null by law, cannot be revived, since the cessation of the impediment occurred contrary to the natural order, and not in the

Translated by churchlatin.ai, a product of Boyne Archives

first husband's natural condition, ibid. However, in these circumstances, the Holy See, for greater caution, is accustomed to grant a dispensation concerning only the first marriage, and to validate the second, ibid. Missa conventualis. Regarding the obligation of conventual Masses, any custom to the contrary is not upheld, page 666. And this must be completely rejected, both in a prescriptive sense and in a presumptive sense, provided that it is an abuse and a corruption, ibid. Missa quoad celebrationem quotidianam. Priests who are obligated, by reason of a benefice, chaplaincy, legacy, or stipend, to celebrate Mass daily by themselves, and who are advised by canonical equity, may sometimes be excused, if a reasonable cause is present, without being obliged to provide a substitute, page 199. However, they are obligated to entrust the celebration to others if they are not obligated to celebrate Mass themselves, page 200. The same is the case when, although they are obligated to celebrate by themselves, it is stipulated in the foundation that if they cannot celebrate by themselves, they shall have it done by another, ibid. Therefore, even if the obligation to celebrate is judged to be personal by law of the foundation, it does not follow that they are released from celebrating by another, if the case was foreseen by the founder in this way, page 201. Missarum onera. The Holy See, with just and reasonable causes present, absolves chaplains from the obligation of celebrating a large number of Masses, which have been omitted in good faith, imposing only the obligation to celebrate some as a kind of penance, page 302.

[*Latin ed. p. 776*]

776 General Index. Item, the Holy See sometimes grants indulgences, so that certain revenues intended for Masses may be converted into funds to be collected for the benefit of legates, page 302. At the request of the founder, Masses bequeathed by him are to be celebrated in a designated church on days of precept; however, the legatee is not obligated to celebrate these Masses in the designated church on days of precept that were suppressed after the founder's death, ibid. Since pious foundations are governed by laws established by the pious founder, the law of the Church, which, through the suppression of feasts, considers nothing to be changed with regard to sacred functions, cannot be invoked in this case, ibid. Mass for the people. The obligation to celebrate and apply the Mass for the people is both personal and real; thus, if a parish priest is legitimately impeded, the obligation does not cease, page 209. Indeed, the celebration and application of this Mass is connected with the benefit of the parish, just as other pastoral duties are connected with the recognition of the flock and the feeding of it with the preaching of the Word of God, the administration of the sacraments, and the example of good works, page 210. Therefore, these duties are so urgent for the parish priest that, although they do not cease in the person of the parish priest, they must nevertheless be fulfilled in some

Translated by churchlatin.ai, a product of Boyne Archives

way by another, ibid. Therefore, a parish priest who is legitimately absent can indeed apply the Mass for his people; but since his absence prevents him from performing other pastoral duties due to the people on days of precept, he is not released from other obligations by this one satisfaction, ibid. Therefore, he is obligated to provide for his people in such a way that both the parish Mass does not cease for the necessary benefit of the people, nor does the explanation of the Word of God, as well as other duties necessary for the people, page 211. Since the application of the Mass for the people, by virtue of an ecclesiastical precept, obliges the parish priest on each day of precept, and constitutes a real obligation: if he omits the application, either by himself or by another, he is obligated to apply the Masses that he has omitted as soon as possible, ibid. A parish priest who is not legitimately impeded must celebrate the Mass for the people in his parish church, ibid. Mass with regard to repetition. The principal reason why the repetition of Masses is prohibited in the present order of discipline, unless there are canonical reasons, is the danger of base gain and avarice, page 84. The same reason provoked the Resolutions of the Holy Congregation of the Council of Trent in our time, which expressly and distinctly declare and prohibit the reception of alms for a second Mass, whenever it is to be repeated for canonical reasons, ibid. Such an express prohibition had already been somewhat foreshadowed by Benedict XIV in the Constitution Quod expensis, issued for the kingdom of Spain and Portugal, ibid.

[*Latin ed. p. 777*]

General Index 777 Although this prohibition is recent and specific, the foundation of the prohibition is very ancient; indeed, although this foundation would not be sufficient to obligate all private authors universally to declare the particular obligation of not receiving alms for the second Mass, it is sufficient for the Holy Congregation of the Council, which authentically interprets the law of Trent, to declare and decree this obligation in its Resolutions, page 84. A declaration issued and decreed is not an authentic promulgation, as if it were a new law, since it should not be considered a new law, although it is, in some respect, an extension of the law; page 85. The intention of the Holy Congregation is that such resolutions should be strictly observed, so that it does not consider exempt those who do not receive alms for the second Mass, but rather applies it as a rule for any obligation undertaken by agreement, ibid. Regular Orders. The essence of a Regular Order does not consist in the manner of living, by which Regular members are bound to live under one and the same roof and under one domestic discipline, page 164. However, these things pertain to the integrity of the Regular Order, which integrity has been enriched by the Holy See with many rights or privileges, ibid. Although, if the Regular family is dissolved by force, and with its dissolution ceases,

Translated by churchlatin.ai, a product of Boyne Archives

consequently, the exercise of the rights or privileges that belonged to it in its integrity; nevertheless, if the same family remains in some way, those rights do not cease which can be consistent with the state in which the same family is found by reason of the violence, ibid. A suppression made by an incompetent authority produces no legal effect whatsoever; although, by accident, the exercise of rights may cease, it is still necessary that the violent dissolution of the subject to which the rights belong be the cause, page 165. For, it does not provide an impediment that does not legally have an effect, Rule 32 in-6. Therefore, once the existence of the subject is determined in some way, the corresponding rights revive; nor, therefore, are the Constitutions of Innocent X, *Instaurandae*, dated October 15, 1652, and *Ut in parvis*, dated February 10, 1654, rightly called, ibid. Agreement regarding the restitution of money. Agreements attached to a contract regarding restitution, which are to be carried out otherwise than with money, lose their force in the same way in the forum of conscience, by the subsequent civil law that invalidates those agreements, page 231. For it is just that, for the public good of society, whenever it requires it, the rights of private individuals should be overridden by civil authority, ibid. Although civil law cannot render such agreements null and void for the public good; it does not follow that the debtor is absolved from making compensation to the creditor in that which he would have given less in reality by payment.

[*Latin ed. p. 778*]

778. Index generalis pecuniae genere vilioris ab ea quae pacto fuerant conventa, si privata iustitia contractus, cui pactum fuit adiectum, id exigat, et iustitia publica per hanc compensationem non laedatur, page 231. Saepe enim privata contractus iustitia ipsam legem fugit; quamvis enim lex, exempli gratia, statuat chartaceam monetam eiusdem esse valoris ac moneta aurea vel argentea: cum tamen eius valor non possit esse nisi repraesentativus monetae realis, subintrat liberum hominum commercium, quod pro rerum adiunctis multo minoris aestimare eam cogitur quam realis moneta aurea aut argentea vel etiam aenea, nonobstante dicta civili lege, quae per hoc non censetur laesa, page 232. Ut tamen pacta, de quibus agimus, abrogata per civilem legem dici possint, necessarium est ut sub verbis legis ostendantur comprehensa: neque enim sufficit ut lex universim cogat chartaceam monetam recipere, si non expresse pactis deroget, ibid. Immo neque sufficere si genericis verbis lex pacto abroget, quando pacta indole sua ita "sunt inita, ut verba generica abrogationis fugiant; pacta enim possident, quousque non demonstrentur sub lege comprehensa, ibid.

Parochus quoad iura parochialia. Ex communi iure ad Parochum privative pertinet extrema sacramenta ministrare intra limites suae paroeciae, salvis exceptionibus aut legitimis consuetudinibus, page 184. Item ex communi iure ad Parochum privative pertinet funebres processiones peragere,

Translated by churchlatin.ai, a product of Boyne Archives

de iis qui sunt defuncti intra limites suae paroeciae, salvis legitimis consuetudinibus, ibid. Monasteria monialium, sicut ceterorum Regularium a paroeciali iurisdictione sunt exempta, ibid. Quare is, qui curam animarum monialium habet, considerari debet, tamquam proprius earum Parochus, ad eos tantum paroeciales effectus, qui neque prohibiti aliunde sint neque laedant localis Parochi iura, page 185. Inter eiusmodi paroeciales effectus continetur celebratio funerum defunctae monialis et funeris delatio cadaveris in sepulturam, ibid. Quare si sepultura e Monasterio distet, non poterit impediri a Parocho funebris delatio cadaveris, quousque Parochus conqueri non possit de laeso iure, page 186. Laesum autem ius paroeciale non censetur, quoties cadaver monialis defunctae in sepulturam deferatur, seu in commune coemeterium, a proprio Capellano absque solemni pompa cum stola tamen et cruce, sine quibus nec deceret fidelium cadavera deferre, ibid.

Parochus quoad residentiam. Parochi abesse nequeunt a sua residentia, nisi causa de iure permissa et ab Ordinario probata, page 720. Episcopus devenire non potest ad privationem Paroeciae ob involuntariam non residentiam, sed tantum ex causa canonica saltem summarie agitata, ibid.

[*Latin ed. p. 779*]

General Index 779. Sacred Patrimony. In establishing a sacred patrimony, there is no law that prescribes that the assets of the sacred patrimony must be located within the diocese of the proper Bishop, page 302. Ecclesiastical Pension. A pension reserved under the title of resignation of a benefice is more difficult to grant, since it bears the character of a burdensome obligation, page 749. In cases of doubt as to whether a certain conciliar decree preserves or does not preserve the right to a pension, the certain law of the pension prevails, ibid. Pensions, which are imposed on parochial benefices, are subject to the Decree *Cum nuperrimis*, but with the conditions that the Sacred Congregations and Religious Rites have prefixed in the Cause of Pensions of May 30, 1874, ibid. In the Decree *Cum nuperrimis*, it is not a question of pensions in the broad sense, which could be said to be portions drawn from some source of revenue; but of pensions strictly understood, received upon benefices generally burdened, not by law, but introduced, which are now called pensions by a single name, page 352. No distinction is made as to the title under which such pensions were imposed, whether under a gracious or burdensome title, or under a title of justice and equity: therefore, all pensions imposed under any title are included in the same way under the Decree, ibid. They are thus included so that, as pensions are, by their original nature, portions of the fruits of benefices, which remain after a due portion has been allotted to the beneficiary, after the fruits of the beneficiary have been reduced, and after any legal preference, if any, has been removed, the pensions are considered to be reduced in the same way, page 353. Such a reduction must be made with due re-

Translated by churchlatin.ai, a product of Boyne Archives

gard for all burdens or taxes imposed by the usurping government, or for any reductions in revenue that may occur as a result of forced conversion of assets; so that both the beneficiary and the pensioner, after having set aside their complaints, experience the inconveniences of the burdens in equal proportion, ibid. However, parochial churches and cathedrals, that is, parochial benefices and episcopal sees, are excepted, the fruits of which cannot be so reduced by pensions that a portion remains that is equivalent to the amount assessed by the Council of Trent, ibid. In the present circumstances in Italy, due to the unjust reduction of revenues, the entire matter concerning pensions already imposed must be regulated according to the new Decree *Cum nuperrimis*, page 361. Therefore, by the term "due portion" as indicated in the Decree, is meant only the sum of one hundred or one thousand Roman scudi, whatever else might be said about chapter 13, session 24, on Reforms, of the Council of Trent, ibid. Episcopal pensions, or the burdens on sees or parochial benefices, are resolved into burdensome pensions from the residue after the 1000 or 100 scudi, and are thus proportionately reduced, as if they had been imposed from the beginning on the residue after the 1000 or 100 scudi, ibid.

[*Latin ed. p. 780*]

780 General Index: Wherefore, pensioners are to be considered not as sharers in all the true fruits, whether of a Bishopric or a Parish; but only as sharers in those fruits which exceed the portion of 1000 or 100, page 362. Therefore, even if there are cases in which pensioners are considered as sharers in all the fruits, receiving the full pension, they would nevertheless leave to the titular the portion of 1000 or 100, and would not have the right to such a quantity of the pension, but only to a proportional reduction from the remainder after 1000 or 100, ibid. However, these things do not seem to be able to be said, if it were shown that the revenues of the titular were not diminished by the present circumstances in Italiae, since a special provision only applies to those who are in need of special assistance; therefore, neither these benefices nor the pensioners are included under the Decree, ibid. While such circumstances prevail, the pensions are variable according to the burdens, so that they may be increased or decreased at each payment, ibid. The process concerning the causes of the Servants of God. Nothing is treated with such scrupulousness by the Holy See, after a long judicial process carried out according to the Decrees of Urban VIII, as the causes of the Servants of God, page 481. The ordinary process, completed with ordinary authority, which is considered sufficient for any cause, in the causes of the Servants of God serves almost for nothing other than to move the Holy See to undertake the examination of the cause, ibid. Therefore, after the introduction of the cause, in the acts of the Apostolic See, the ordinary process admitted, then the cause truly and properly begins, with many steps and processes to be completed by Apostolic authority, as if,

Translated by churchlatin.ai, a product of Boyne Archives

after much labor in the Curias, nothing had been accomplished, page 482. Therefore, the final judgments concerning the causes of the Servants of God, should, in fact, be considered certain based solely on human prudence, so that all human faith may be maintained, if they were to be rejected as uncertain, ibid. Appeal to a secular tribunal. An appeal to a secular tribunal in ecclesiastical matters, in order to avoid the ecclesiastical forum, incurs an excommunication imposed by a special Apostolic Constitution, reserved in a special manner to the Roman Pontiff, page 422. Religious Houses. Religious houses are subject to visitation, correction, and in every way to the jurisdiction of the Ordinary of the place, as Delegate of the Apostolic See, if they do not contain at least six religious of proven life, of whom at least four are priests of mature age; as also, convents erected after the Decree of Urban VIII, issued on June 21, 1625, in which religious live in a number less than twelve. According to the Constitution recently issued by Innocent XII on December 23, 16*7, page c67.

[*Latin ed. p. 781*]

Index generalis 781. Rescripts concerning pious intentions. Rescripts by which the pious intentions of the faithful are altered are to be interpreted strictly, page 661. A Prince's rescript is never presumed to be surreptitious or obtained by deceit, unless it has been proven that the truth was concealed in the prayers, or that a falsehood was suggested, ibid. To alter testamentary dispositions, a just and necessary cause must be present, even with the extrajudicial inquiry of the Bishop, ibid. The inability to obtain a remedy from elsewhere regarding the tenure of revenues constitutes a sufficient cause for the reduction of endowments, ibid. The Pope, whether by the simple granting of a benefice, or by a union and reservation made by himself, is considered to have derogated from the ecclesiastical patronage, ibid. Lay patronage, arising from a foundation or endowment, is never subject to Apostolic reservations and affections, or to implicit reservations, ibid. The erection of a church under patronage into a collegiate or cathedral church is considered to be done without prejudice to the patron, who therefore retains the right of presentation, ibid. Indeed: If a canonry vacant in a church under patronage is erected into a theological or penitential establishment, the patron is considered to have the right to nominate, ibid. The Pope does not derogate from passive patronage, by prejudicing those to whom the institution is due by law of the foundation, whether it concerns a direct or indirect vocation, ibid. Sacred Congregations concerning Rescripts. If prayers have been rejected by the Holy Congregations with the words: "as is explained, it does not seem expedient," grace is indeed denied, but not absolutely, so that there is always hope of obtaining grace, page 471. However, in order to obtain grace, it is necessary that the prayers are not only reformed externally; which would be of little or no value; but that they contain sufficient motives, which, according to the Holy Canons,

Translated by churchlatin.ai, a product of Boyne Archives

are capable of moving the Pope to grant grace, ibid. Seminary concerning Deputies. The deputies, whose counsel the Bishop must use in the administration of temporal affairs, that is, in the union of benefices with the seminary, in removing difficulties that disturb the instruction or preservation of the seminary, also in the expulsion and appointment of ministers, and in making expenses, must be four in number, page 615.

[*Latin ed. p. 782*]

782 General Index: Of these two [persons] chosen from the Canonicals of the Cathedral Church, one is to be chosen by the Bishop, the other by the Chapter, and two are to be taken from the Clergy, of whom one is likewise to be chosen by the Bishop, the other by the Clergy, page 615. Although their office is perpetual, nevertheless, if a person deputed by the Clergy obtains a Canonry in the Cathedral Church, he thereby ceases from the duties of his deputation, ibid. Right of Burial. A deceased person who has chosen no burial place is to be buried in the burial place of the ancestors; and if that does not exist, in his own parish church, page 693. Although, according to the old law, the right of burial belonged to all, and only to parish churches, nevertheless, according to a special and more recent law, this same right belongs to several other churches, page 38. Once the law of a public cemetery has been enacted, this right of burial, with all the connected rights, remains secure and valid, except for the material deposition of the corpse, which is to be performed later in the public cemetery according to local custom, ibid. Through the illegitimate suppression of Regular Canons, the churches do not lose the right of burial; for such a right, although perhaps acquired with a view to the existing Regular community, once this right has been acquired, remains a real right, permanently inherent in the church itself, as long as the church is not canonically suppressed or the right is not declared extinct, page 40. Through the possession of the right of burial acquired by the church, real rights arise in the faithful, whether through established burial places of the ancestors, or through those buried there from Alet, which rights cannot depend solely on the variable fact of the existence of the Regular community, ibid. Marriage. To prove the validity of a marriage, it is not sufficient that only one party makes a promise, but the reciprocal promise of the other party is necessary, page 703. However, this promise and reciprocal promise are not subject to any special external solemnity; therefore, the local Ordinary, with a view to avoiding scandal and harm, cannot subject marriages to any penalty of nullity beyond those that are recognized by common law, ibid. The Council of Trent prescribed no form for marriages contracted by future words, and therefore they are contracted in the same way as they were contracted before the Council of Trent, ibid. Therefore, in external matters, it is sufficient to prove the existence of a marriage if it is established that there is a mutual agreement of the contracting parties, either by words, or by signs, or by any other equivalent means,

Translated by churchlatin.ai, a product of Boyne Archives

Chapter 21, 23 on Marriage, ibid. However, a mere proposal and intention to contract a marriage is not sufficient to establish a marriage, but certain proofs are required, from which it appears that there is a formal consent of both parties, ibid. In cases of doubt concerning the words or signs of a promise of marriage in external matters, the interpretation must be in favor of freedom. Sacred Congregation, April 5, 1851, and March 31, 1760, ibid.

[*Latin ed. p. 783*]

Index generalis 783. Si cum signis dubiis coniuncta sit, accipe, dummodo intercessit copula, et de honestate mulieris alio loco ambiguitas non maneat, pagina 703. Anuli subharratio, vel missio munerum, non valet loco sponsalium promissionis, dummodo haec, ex consuetudine patriae, veram promissionem et repromissionem non determinant, ibidem. Qui puellam defloravit, in foro externo damnatur, vel ad eam ducendum, vel, si eam ducere renuat, damnatur ad solvendam dotem ab Episcopo taxandam, nec non ad damna illata reparanda, pagina 704. Suspensio ex informata conscientia. Decretum ex informata conscientia ob crimina publica editum non sustinetur, pagina 613. Poenae additae suspensioni ex informata conscientia infligtae sunt irritae, ibidem. Imo ipsa suspensio extraiudicialiter irrogata non potest esse perpetua, ibidem. Perpetuae censentur suspensiones sine ulla temporis determinatione latae, ibidem. Territorium parochiale. Territorium parochiale debet esse certum, stabile atque perpetuum, ita ut nulla praescriptione tolli aut immutari possit; hinc talis esse debet et Parochi iurisdictio, quae sine territorio concipi nequit, pagina 649. Episcopis facultas competit fines paroeciarum immutandi, iis tantum in casibus, in quibus ob locorum distantiam sive difficultatem parochiani sine magno incommodo ad percipienda sacramenta ac divina officia audienda ad parochialem ecclesiam accedere non possunt, vel cum Ecclesiae parochiales territorium distinctum non habeant, ibidem. Si domus aliqua in suis lateribus duas habeat portas, quae duarum paroeciarum finibus respondeant, ea subest illius Parochi iurisdictioni, in cuius limitibus aditus principalis invenitur, ibidem. Aditus vero principalis ille censetur qui cum originario et architectonico prospectu aedificii concordat, et magis frequentatus est, ibidem. Si domus aliqua in suis lateribus diversarum paroeciarum fines attingat, sui Parochi iurisdictionem cui subest non effugit, etiamsi in alio latere nova aperiatur porta, ibidem. Limites Dioecesium et Paroeciarum, auctoritate ecclesiastica semel definiti, non possunt privata auctoritate mutari; immo neque praescribi, quoties documenta supersint, quae limites, quinam olim fuerint, satis clare designent, pagina 428. Testator quoad pias fundationes. Piae testatorum fundationes sunt apprime servandae; eorumque fundationum dispositiones considerantur in Ecclesia tamquam supremae leges, quibus

Translated by churchlatin.ai, a product of Boyne Archives

nullus alius possit derogare nisi Summus Pontifex, pagina 468.

[*Latin ed. p. 784*]

784 General Index: Bishops are naturally executors of pious intentions, upon whom not only the right, but also the duty, rests to ensure that these pious intentions are not neglected, even if the testators have not made mention of the Bishop's vigilance. page 468. Once a disposition has been made by the testator, such as the celebration of Masses and other things on holy days by order, the chaplain cannot be released from this obligation on those holy days which have subsequently been suppressed, ibid. Although such dispositions in pious intentions cannot be confused with Church law (which desired that all sacred functions be celebrated on holy days, even those that are covered or suppressed), nevertheless, it is not the intention of the Church in suppressing certain holy days to defraud the pious intentions of the founders of this benefit, ibid. Force and Fear: Serious force or fear falling upon a steadfast man renders the religious profession, as well as marriage, null and void by law. page 288. Fear, which we call reverential, consists in a force which, although not inflicted by violent or sudden means, is nevertheless inflicted in such a way that, considering the persons and circumstances, it produces a similar effect on the mind of the person affected, ibid. Therefore, since it is not the manner in which force is inflicted that renders a profession or even a marriage null, but the coercion in the mind of the person affected resulting from the force inflicted, which compels the unwilling to profess; reverential fear, like open force, renders a profession null, ibid. Therefore, it is in vain to inquire whether atrocious threats, blows, etc., are necessary to constitute reverential fear, when it is clear that a meticulous person has been so surrounded that he has been compelled, against his expressed will, to profess, ibid. A religious profession is not validated by ratification, unless the substantial formalities required by law for the validity of the act are repeated, except perhaps in the case where the profession is null due to a hidden defect, ibid.

Translated by churchlatin.ai, a product of Boyne Archives